# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

## No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, CHARLES TACKETT, ON BEHALF OF THEMSELVES AND ALL OTHER MEMBERS OF THE SIOUX TRIBE OF INDIANS OF THE ROSEBUD AGENCY, [illegible], APPELLANTS,

vs.

FRANCIS E. LEUPP, COMMISSIONER OF INDIAN AFFAIRS; SECRETARY OF THE INTERIOR, [illegible], SECRETARY OF THE TREASURY, ET AL.

(20,972.)

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*vs.*

FRANCIS E. LEUPP, COMMISSIONER OF INDIAN AFFAIRS; JAMES RUDOLPH GARFIELD, SECRETARY OF THE INTERIOR; GEORGE BRUCE CORTELYOU, SECRETARY OF THE TREASURY, ET AL.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# In the Court of Appeals of the District of Columbia.

No. 1786.

REUBEN QUICK BEAR ET AL., Appellants,
*vs.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*, Appellants,
*vs.*
REUBEN QUICK BEAR ET AL.

a Supreme Court of the District of Columbia.

In Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Complainants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

BILL IN EQUITY
Filed May 11, 1906.

# In the Supreme Court of the District of Columbia.

The 11th day of May, 1906.

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REUBEN QUICK BEAR, RALPH EAGLE FEATHER and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., *Plaintiffs*

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs, ETHAN ALLEN HITCHCOCK, Secretary of the Interior, LESLIE M. SHAW, Secretary of the Treasury, CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, *Defendants.*

No. 26271

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*To the Supreme Court of the District of Columbia holding an Equity Court.*

The plaintiffs state as follows :

1. The plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians of the Rosebud Agency, in the State of South Dakota, and bring this suit in their own right as well as for all other members of the Sioux tribe of Indians of the Rosebud Agency.

2. The defendants are citizens of the United States and residents of the District of Columbia, and are sued in this action as the Commissioner of Indian affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury respectively.

3. That by article VII of the Sioux treaty of April 29, 1868 (15 Stats., 635, 637), continued in force for twenty years after July 1, 1889, by section 17 of the Act of March 2, 1889 (25 Stats., 858, 894–5), the United States agreed that for every thirty children of the said Sioux tribe who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher.

4. That for the purpose of carrying out the above provision of the said treaty during the fiscal year ending June 30, 1906, the following appropriation was made by the Act of March 3, 1905, section 1 (33 Stats., 1048, 1055):

> For support and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars.

The fund so appropriated is generally known as the Sioux treaty fund.

5. That section 17 of the said Act of March 2, 1889, further provides as follows:

> And in addition thereto there shall be set apart out of any money in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time that this act takes effect, as follows: one half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.

This fund of three million dollars is generally known as the Sioux trust fund.

6. That the interest on the said Sioux trust fund is paid annually by the United States in accordance with the provisions of the second clause of the Act of April 1, 1880 (21 Stats., 70), reading as follows:

> And the United States shall pay interest semi-annually, from the date of the deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or pre-

> scribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

7. That the Act of June 7, 1897, section 1 (30 Stats., 62, 79), contains the following provision :

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school.

8. That, in violation of the said provision of the Act of June 7, 1897, the said Francis E. Leupp, Commissioner of Indian Affairs as aforesaid, has made or intends to make, for and on behalf of the United States, a contract with the Bureau of Catholic Indian Missions of Washington, D. C., a sectarian organization, for the care, education, and maintenance, during the fiscal year ending June 30, 1906, of a number of Indian pupils of the said Sioux tribe, at a sectarian school on the said Rosebud Reservation, known as the St. Francis Mission Boarding School, and in the said contract has agreed to pay or intends to agree to pay to the said Bureau of Catholic Indian Missions of Washington, D. C., a certain rate per quarter as compensation for every pupil in attendance at the said school under the said contract, the said payment (which, as the plaintiffs are informed and believe, will amount to the sum of Twenty-seven thousand dollars), to be made either from the said Sioux treaty fund or from the interest of the said Sioux trust fund or from both.

9. That all payments made to the said Bureau of Catholic Indian Missions of Washington, D. C., under the

said contract, either out of the said Sioux treaty fund or out of the interest of the said Sioux trust fund will be payments for education in a sectarian school, and will be unlawful diversions of funds appropriated by Congress, and in violation of the above recited provision of the Act of June 7, 1897, and such payments will seriously deplete the interest of the said Sioux trust fund, to the great injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will unlawfully diminish the amount of money which should be expended out of the said Sioux treaty fund and the interest of the said Sioux trust fund for lawful purposes, for the benefit of the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will also unlawfully diminish the cash payments which the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive per capita out of the interest of the said Sioux trust fund.

10. That the plaintiffs have never requested nor authorized the payment of any part of the said Sioux treaty fund, or of the interest of the said Sioux trust fund, to the said Bureau of Catholic Indian Missions of Washington, D. C., or any other person or organization whatever, for the education of Indian pupils of the said Sioux tribe in the said St. Francis Mission Boarding School, or any other sectarian school whatever, but have on the contrary protested against any use of either of the said funds, or the interest of the same, for the purpose of such education.

11. That the plaintiffs have no remedy at law.

Wherefore the plaintiffs ask relief, as follows :

I. That a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, to restrain him from executing any contract with the said Bureau of Catholic Indian Missions of Washington, D. C., or any other sectarian organization whatever, for the support, education or maintenance of any Indian pupils of the said Sioux tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, and that a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, and the said Ethan Allen Hitchcock, Secretary of the Interior, to restrain them from paying or authorizing the payment of, either by themselves or by any of their subordinate officers or agents whatever, any moneys of either the said Sioux treaty fund or the interest of the said Sioux trust fund, or any other fund appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux tribe, to the said Bureau of Catholic Indian Missions, of Washington, D. C., or to any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux tribe, at the said St. Francis Mission Boarding School or any other sectarian school on the said Rosebud Reservation or elsewhere.

II. That a permanent injunction issue against the said Leslie M. Shaw, Secretary of the Treasury, the said Charles H. Treat, Treasurer of the United States, and the said Robert J. Tracewell, Comptroller of the Treasury, to restrain the said Leslie M. Shaw from drawing, and

the said Robert J. Tracewell from countersigning, and the said Charles H. Treat from paying any warrants in favor of the said Bureau of Catholic Indian Missions, of Washington, D. C., or any other sectarian organization whatever, for the support, education, and maintenance of any Indian pupils of the said Sioux tribe, at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, payable out of any money appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux tribe.

III. General relief.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

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STATE OF SOUTH DAKOTA, }
*County of Meyer,* } *ss:*

Personally appeared before me, a notary public in and for Meyer County, these three, Reuben Quick Bear, Ralph Eagle Feather, and Charles Tackett, who after being duly sworn state that the facts set forth in the foregoing bill from personal knowledge are true, and those stated upon information and belief they believe to be true.

REUBEN QUICK BEAR,
RALPH EAGLE FEATHER,
CHARLES TACKETT.

Sworn and subscribed to before me, a notary public, this seventh day of May, 1906.

J. A. ANDERSON,
*Notary Public.*

[SEAL]

[J. A. Anderson, Notary Public, South Dakota.]

*My commission as notary public expires 1910.*

IN THE
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

| | |
|---|---|
| REUBEN QUICK BEAR,<br>RALPH EAGLE FEATHER AND<br>CHARLES TACKETT,<br>*Plaintiffs*<br>*vs.*<br>FRANCIS E. LEUPP, Commissioner Indian Affairs,<br>ETHAN ALLEN HITCHCOCK, Secretary of the Interior,<br>LESLIE M. SHAW, Secretary of the Treasury,<br>ROBERT J. TRACEWELL, Comptroller of the Treasury,<br>CHARLES H. TREAT, Treasurer United States,<br>*Defendants.* | Number<br>Docket<br>**In Equity.** |

*Affidavit of Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett.*

STATE OF SOUTH DAKOTA, } *ss:*
*County of Meyer,* }

Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, plaintiffs in the above-entitled cause, being duly sworn, depose and say: That neither they nor any of them have given permission or authority to any officer of the United States, or to any other person to use or expend any portion of the treaty funds, trust funds or other moneys now due or that may hereafter become due and placed to the credit of the Rosebud Band of Sioux Indians, in the State of South Dakota, in the Treasury of the United States, for the maintenance or support of any sectarian or denominational school, or any school excepting only such schools as are maintained and conducted by the United States.

The affiants have been informed and believe the fact to be that it is the intention of the officers of the United States to divert and use a portion of the funds that may be due the Rosebud tribe of Indians as herein mentioned for sectarian or denominational schools, petitions purporting to grant the power to make such use of these funds having been circulated among and signed by a minority of the membership of the said tribe of Indians. The affiants further assert that they believe the fact to be that over three-fourths of the members of said Indian tribe are opposed to having any portion of their said funds used for the support or maintenance of any school excepting those which are altogether and wholly maintained and controlled by the United States, and that a protest against such use of their funds has been filed in the office of the Commissioner of Indian Affairs, signed by these affiants and nine hundred and eighteen other adult members of the Rosebud tribe of Sioux Indians to which these affiants belong.

These affiants further state that they have heard read the bill filed in the above-entitled cause, and know the contents thereof, and that the facts therein stated upon personal knowledge are true, and those stated upon information and belief they believe to be true.

REUBEN QUICK BEAR,
RALPH EAGLE FEATHER,
CHARLES TACKETT.

Sworn and subscribed to before me, a notary public, this seventh day of May, 1906.

J. A. ANDERSON,
*Notary Public.*

[J. A. Anderson, Notary Public,
South Dakota.]

*My commission as notary public expires 1910.*

10 *Answer.*

Filed December 21, 1906.

In the Supreme Court of the District of Columbia.

No. 26271.

REUBEN QUICKBEAR, RALPH EAGLE FEATHER, and CHARLES TALKETT, on Behalf of Themselves and of Other Members of the Sioux Tribe of Indians of the Rosebud Reservation Agency, Plaintiffs,

*vs.*

F. E. LEUPP, Commissioner of Indian Affairs; E. A. HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

The defendants, by way of answer to the bill heretofore filed against them by the plaintiffs, state as follows:

1. The defendants admit that the plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians, but aver that the said Indians are only nominal plaintiffs, the real plaintiff being the Indian Rights Association, who have had this suit brought for the purpose of testing the validity of the contract hereinafter referred to.

2. The defendants admit that they are residents of the District of Columbia, and are *used* in this action as Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury, respectively. These defendants, as officers of the Government of the United States, have no interest in the controversy raised by the bill, except to perform their duties under the law, and they, therefore, as such officers, respectfully submit the validity of the contract hereinafter referred to, and the payments there-
11 under, to the judgment of this honorable court. The real defendant in interest is the "Bureau of Catholic Indian Missions," a corporation duly incorporated by chapter 363 of the acts of Assembly of Maryland for the year 1894, for the object, *inter alia*, of educating the American Indian directly and also indirectly by training their teachers and others, especially to train their youth to become self-sustaining men and women, using such methods of instruction in the principles of religion and of human knowledge as may be best adapted to these purposes.

As the object of the bill filed is to test the validity of a contract made between the Commissioner for Indian Affairs and the said "Bureau of Catholic Indian Missions," and the validity of the payment of the money thereunder, this answer will set forth the facts and the statutes of the United States under which it is contended that such contract and the payment of money thereunder are valid.

3. These defendants admit the allegations of paragraph 3 of the bill, but the pertinent part of the Sioux Treaty of April 29, 1868, is only partially stated therein. The full statement of that part of the Sioux treaty will be hereinafter made.

4. These defendants admit the allegations of paragraph 4 of the bill.

5. These defendants admit the allegations in paragraph 5 of the bill, but aver that though the provision from section 17 of the act of March 2, 1889, is correctly stated, as far as it goes, there are other portions of said act which should be called to the attention of the court, which is accordingly done hereafter in this answer.

6. These defendants admit the allegations in paragraph 6 of the bill, but aver, that although clause 2 of the act of April, 1880, is correctly stated, as far as it goes, there are other provisions of law to be called to the attention of the court in this connection,
12 which is accordingly done in the subsequent part of this answer.

7. These defendants admit the allegations in paragraph 7 of the bill, but aver that, although the provisions in the act of June 7, 1897, sec. 1, is correctly stated as far as it goes, the section is not fully stated, nor are other parts of the act referred to which bear directly on the question raised by the bill.

8. These defendants admit that within the meaning of the acts of Congress the "Bureau of Catholic Indian Missions" is a sectarian organization, and the industrial school known as the "St. Francis Mission Boarding School," on the Rosebud Reservation, is a sectarian school.

These defendants further say that a contract was made by and between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and the "Bureau of Catholic Indian Missions," for the care, education, and maintenance during the fiscal year ending June 30, 1906, of 250 Indian pupils of the Sioux tribe of Indians, at the industrial school known as St. Francis Mission Boarding School, on the Rosebud Reservation, and by such contract it was agreed that there should be paid to the "Bureau of Catholic Indian Missions" twenty-seven dollars ($27) per quarter for every pupil in attendance, provided there should not be paid under the contract a sum aggregating more than twenty-seven thousand dollars ($27,000). This amount, according to the contract, was to be paid from either or all of the funds of the Sioux tribe of Indians, designated technically as "Interest on Sioux Fund," "Education Sioux Nation," and "Support of Sioux of different tribes, subsistence, and civilization," all of which, however, are embraced in the two funds stated in the bill, to wit, the "Sioux Treaty Fund," described in paragraph 4 of the bill and the "Sioux Trust Fund," described in paragraph 5 of the bill.

13 This contract has been fully performed by the "Bureau of Catholic Indian Missions" and there is due to it thereunder from the said funds the total amount of twenty-seven thousand dol-

lars ($27,000) if the said contract was legally made. This contract was approved by the Acting Secretary of the Interior, Mr. Jesse E. Wilson, by direction of the President of the United States, but, by the same direction, no payments have been made under it in order that the validity of the contract might be determined by the courts of the United States. The circumstances under which this contract was entered into and approved are hereinafter more fully stated.

These defendants deny the allegation in paragraph 8 of the bill that this contract was made in violation of the act of June 7, 1897, or in violation of any other act of Congress.

9. These defendants admit that payments under this contract will be payments for education in a sectarian school, as the term "sectarian school" is defined in the acts of Congress, but they deny that said payments will be in violation of the act of June 7, 1897, and they further deny that such payments will deplete the interest of said "Sioux Trust Fund" to the injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that such payments will unlawfully diminish the amount of money which should be expended out of the said "Sioux Treaty Fund," and the interest of the "Sioux Trust Fund" for lawful purposes for the benefit of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that said payments will also unlawfully diminish the cash payments which the said plaintiffs and other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive *per capita* out of the interest of the said "Sioux Trust Fund" as alleged in paragraph 9 of said
14 bill; all of which will more fully and at large appear by the detailed statements in this answer hereinafter made.

10. These defendants admit that the plaintiffs, to wit, the three Indians whose names appear as plaintiffs in the caption of this bill, have never requested or authorized the payment of any part of the Sioux Treaty or Trust Fund to the said "Bureau of Catholic Indian Missions," or any other person or organization whatever for the education of Indian pupils of the said Sioux tribe in said "St. Francis Mission Boarding School," or any other sectarian boording school whatever, but on the contrary, these defendants admit that the said plaintiffs protest against any use of either of the said funds, or the interest of the same, for the purpose of such education, as stated in paragraph 10 of the bill.

11. But now these defendants further answering say, that although they have answered in terms all the allegations in all the paragraphs of the bill contained, it is necessary for a full understanding of the rights of the parties, that all the pertinent facts connected with the use of money under the contract of the United States for the education of the Indians in contract schools which are sectarian within the meaning of the acts of Congress, should be stated, so that in the light of all these facts, only a few of which are stated in the bill, the legality of the contract assailed may be judicially determined.

12. The Catholic Missions Schools were erected many years ago at the cost of charitable Catholics, and with the approval of the authorities of the Government of the United States, whose policy it was then to encourage the education and civilization of the Indians through the work of religious organizations. Under the provisions of the act of 1819, ten thousand dollars ($10,000) were appropriated for the purpose of extending financial help "to such associations or individuals who are already engaged in educating the Indians" as may be approved by the War Department.

In 1820, twenty-one schools conducted by different religious societies were given eleven thousand, eight hundred and thirty-eight dollars ($11,838), and from that date until 1870, the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. For a long time the different denominational schools referred to were aided by the Government without any formal contract.

In 1870, an act of Congress was passed appropriating one hundred thousand dollars ($100,000) for the support of Indian schools among Indian tribes not otherwise provided for, *i. e.*, among tribes not having treaty stipulations providing funds for educational purposes, and these appropriations continued until 1876. Contracts were made annually with the mission schools of the different denominations payable out of this appropriation for the education of Indian pupils. As to the tribes having funds for educational purposes under treaty stipulations, contracts were also made with the mission schools of the different denominations payable out of the treaty funds. In 1876, Congress began the general appropriation "for the support of industrial schools and other educational purposes for the Indian tribes," and these annual appropriations from the public moneys of the United States have been — from that time until the present. These appropriations always were put in the appropriation acts under the heading "Support of Schools"—and from these public funds, and, in the discretion of the Commissioner of Indian Affairs, from the tribal funds hereinafter explained, were paid the amounts due under the contracts made by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior with the various denominational schools for the education of Indian pupils.

Some time before 1895 opposition developed to these contracts with denomination schools, on the ground that the public moneys of the United States raised by taxation should not be used for education in sectarian institutions; and also for other reasons.

Accordingly there is found in the Appropriation Act of 1894, ch. 290 (28 Statutes at Large, p. 311), approved August 15, 1894, in that part of the act appropriating the public moneys for the support of Indian schools and under the heading "Support of Schools," the following:

"That the expenditure of money appropriated for school purposes under this act shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects

in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.

"Provided, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

In his annual report for the fiscal year ending June 30, 1894, the Secretary of the Interior said:

"The contract schools are now the subject of general discussion.
I agree fully with those who oppose the use of public money
17 for the support of sectarian schools. But this question should
be considered practically. The schools have grown up. Money has been invested in their construction at a time when they were recognized as wise instrumentalities for the accomplishment of good. I do not think it proper to allow the intense feeling of opposition to sectarian education, which is showing itself all over the land, to induce the Department to disregard existing conditions. We need the schools now, or else we need a large appropriation to build schools to take their place.

"It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the Department, and, unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%."

Congress, in pursuance of this recommendation, introduced for the first time in the Appropriation Act of 1895, ch. 188 (28 Stat. at Large, 888), a limitation on the use of public money in sectarian schools.

The act appropriates, under the heading "Support of Schools," of the public moneys of the United States "for the support of Indian day and industrial schools and for other purposes" . . . $1,164,350."

. . . .

"Provided, that the Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June 30th, 1896, to an
extent not exceeding 80% of the amount so used in the fiscal
18 year 1895, and the Government shall, as early as practicable,
make provision for the education of Indians in Government schools."

(See 28 Stat. at Large, p. 903.)

Congress, in the Indian Appropriation Act of 1896, ch. 398, appropriated from the public moneys of the United States, under the head "Support of Schools," "for support of Indian day and industrial schools and for other educational purposes," . . . $1,235,000." . . . and then as a qualification upon the appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language in the act:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, that the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 50% of the amount so used for the fiscal year 1895."

(See 29 Stat. at Large, p. 345.)

Congress, in the Indian Appropriation Act of 1897, ch. 3, appropriated from the public moneys of the United States, under the head of "Support of Schools," "for support of Indian day and industrial schools, and for other educational purposes . . . $1,200,000 . . ." and then as a qualification upon this appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for edu-
19 cation in any sectarian school. Provided, the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 40% of the amount so used for the fiscal year 1895."

(See 30 Stat. at Large, p. 79.)

Congress, in the Indian Appropriation Act of 1898, ch. 545, appropriated from the public moneys of the United States, under the head of "Support of Schools" "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000 . . . Provided, that the Secretary of the Interior, may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year of 1899, but shall only make such contracts at such places were nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 30% of the amount so used for the fiscal year 1895."

(See 30 Stat. at Large, p. 587.)

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Congress, in the Indian Appropriation Act of 1899, ch. 324, appropriated from the public moneys of the United States, under the head of "Support of Schools," "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000, . . . Provided, that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding 15% of the amount so used for the fiscal year 1895, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools."

**(30 Stat. at Large, p. 942.)**

The several Indian annual Appropriation Acts since 1899, to wit, beginning with 1900 to the present time, contain under the head of "Support of Schools" simply a general appropriation of public moneys "for the support of Indian and industrial schools, and for other educational purposes," without any proviso in any of them respecting contracts with sectarian schools, or without any statement in any of them of the policy of the Government with respect to the sectarian schools.

It will be observed that the phrase, "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," which is cited and relied on in paragraph 7 of the bill, is found only in the Indian Appropriation Acts of 1896 and 1897, and in no prior or subsequent acts of Congress; that in these two acts it is a limitation on the appropriation of public moneys, and is found only under the heading "Support of Schools," under which the public money of the United States is appropriated for support of Indian schools, and does not occur in any other part of these acts of Congress. These defendants, therefore, submit, that this statement of policy, in so far as it can now have any legal effect, was intended only to apply to appropriations of public moneys for education in sectarian schools, and inasmuch as the appropriation of public moneys for these purposes was being reduced from year to year by a percentage which would make the last appropriation to be for the fiscal year ending June 30, 1900, there was no necessity for repeating the phrase containing the policy of the Government in any acts after 1897. The cessation of the appropriation from the public moneys for education in the sectarian schools, was treated as the accomplishment of the purpose contained in the statement of the policy found in the acts of 1896 and 1897.

The above paragraph contains all the matter pertinent to the appropriation of public moneys for the support of education in sectarian schools. These appropriations ceased with the Indian Appropriation Act of 1899, have never been made since, nor is anyone asking that they should be made, or that any public moneys of the

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United States raised by taxation should be employed for such purposes.

13. But these defendants, further answering, say that entirely separate and apart from the public moneys, which, as stated in paragraph 12 of this answer, were appropriated until 1899 for education in sectarian schools, there are other funds known as "Tribal Funds" which may be applied for these purposes. These funds these defendants respectfully submit are not public moneys but really belong to the Indians themselves, and it is the purpose of this paragraph of this answer to give a general account of these funds, and a particular account of the "Tribal Funds" of the Sioux Indians which are directly in controversy in this case will be given in the next paragraph.

These "Tribal Funds" may be roughly grouped into two classes:

(*a*) Where cessions of land or other property have been made by the Indians, and in consideration thereof a certain sum of
22 money is deposited in the Treasury of the United States, which is used for the Indians in the discretion of the Secretary of the Interior. These are called "Trust Funds."

(*b*) Where cessions of land or other property have been made by the Indians under treaties, and in consideration therefor the Government of the United States has by treaty bound itself to furnish money for the civilization and education of the Indians. These are called "Treaty Funds."

Examples of these funds are as follows:

Menominee Fund: Interest, $7,651.96 per annum (Treaty of 1848, Art. 5, 9 Stat. at Large, 952).

Menominee Log Fund: Interest, $76,313.98 per annum (Act of March 22, 1882, 22 Stat. at Large, 30; Act of June 12, 1890, 26 Stat. at Large, 146).

Osage Fund: Interest, $416,371.95 per annum (Treaty 1865, Art. 2, 14 Stat. at Large, 687; Act July 15th, 1870, 16 Stat. at Large, 362; Act of June 16, 1880, 21 Stat. at Large, 292).

Osage Fund: Interest on $69,120, 5% (Treaty Jan. 2d, 1825, for educational purposes per Senate resolution, Jan. 9, 1838, 7th Stat. at Large, 242).

The yearly amounts provided for the Indians under treaties are annually appropriated in the Indian Appropriation Acts, not in that part of the act under the title "Support of Schools" which appropriated the public money of the United States, but under the heading "Fulfilling Treaty Stipulations with and support of Indian Tribes," for although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

But inasmuch as according to Indian custom, the property is held in common, and inasmuch as the Indians are regarded
23 as wards of the nation, the money is not distributed per capita, but is expended for them, and for their benefit and advantage, under the discretion of the Secretary of the Interior. For some of the laws conferring this discretion, see 14th Stat., 687;

16 Stat., 362; 21 Stat., 292; 22 Stat., 30; 25 Stat., 895; 26 Stat., 146, 344.

14. As to the "Sioux Funds" directly in controversy, the facts are as follows:

On March 2, 1889, the act of Congress of 1889, ch. 405, was approved. This was entitled "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian tribe to the remainder." Under this act, the Indians made certain cessions of land, and in partial consideration therefor it was provided in section 17 of the act as follows:

"And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act in proportion to the number that shall so receive rations and annuities at the time that this takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments per capita, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."

25 Stat. at Large, 895.

24 This is the fund called the "Sioux Trust Fund" in the fifth paragraph of this bill.

The method of the payment of the interest on this fund was changed in 1880 by the act of 1880, chapter 41, as follows:

"The Secretary of the Interior be, and he is hereby authorized to deposit in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds or other stocks and securities belonging to the Indian Trust Fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, and the United States shall pay interest semi-annually from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties, or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress"

This provision is partially cited in the bill in paragraph 6.

15. Under a treaty between the United States and different tribes of Sioux Indians made on April 29, 1868 (15 Stat. at Large, 635), these Indians made large cessions of land and other rights, and in

partial consideration therefor, the United States agreed with them as follows:

"Art. VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be settled on said agricultural reservations, and they, therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years,
25 to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with, and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years."

By the act of Congress of February 28, 1877, ch. 72 (19th Stat. at Large, 254–6), ratifying an agreement with bands of Sioux nation, in consideration of further land cessions, it was provided:

"In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868."

By the seventeenth section of the act of 1889, ch. 405 (25th Stat., at Large, 894), it was provided—

"that the 7th article of the said treaty of April 29th, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the act shall take effect."

By the act of 1905, ch. 1479 (33 Stat. at Large, p. 1048), entitled—

"An act making appropriations for current and contin-
26 gent expenses of the Indian Department and for fulfilling treaty stipulations with various Indians tribes for the fiscal year ending June 30th, 1906, and for other purposes"—

it was provided under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes" as follows:

"For support of and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with art. 7 of the treaty of April 29th, 1868, which article was continued in force for twenty years by sect. 17 of the act of March 2, 1889, $225,000."

A similar appropriation has been annually made for many years back in the Indian Appropriation Acts.

This is the "Treaty Fund" in dispute, referred to in the 4th paragraph of the bill.

These defendants respectfully represent that this "Treaty Fund" does not differ from the "Trust Fund" in the main point that it is

money belonging to the Indians and not public money of the United States.

Both funds arise from cessions made by the Indians of lands and other rights. The one is a specific sum of which the United States is a trustee for the Indians; the other is an obligation payable in instalments under the agreement of a treaty.

These defendants, therefore, respectfully submit that as to both of these funds there is nothing to prevent the Secretary of the Interior from using them in his discretion, and especially from using them as the real owners thereof desire and request.

16. Prior to 1900, the sectarian schools were aided by appropriations from the public moneys, and in the discretion of the Secretary of the Interior, from the tribal funds just described.

27 In 1900, not only the public appropriations ceased, as has been heretofore shown, but all aid from the tribal funds also ceased, except as to the Osage Treaty and trust funds hereinbefore referred to. At the request of the Osage Indians, their treaty funds have been annually and uninterruptedly applied to the Catholic mission schools under annual contract with the Commissioner of Indian Affairs, approved by the Secretary of the Interior. With the exception of the Osage funds, no "Tribal Funds" were applied to education in denominational schools from 1900 to 1904.

In the meantime application was made to President McKinley by the "Bureau of Catholic Indian Missions" for the revocation of the "Browning Ruling" and the use of "Tribal Funds" for the education of the Catholic Indian children in Catholic schools.

On September 30, 1896, the then Commissioner of Indian Affairs, D. M. Browning, in answer to the question, "whether parents of Indian children have the right to decide where their children shall attend school," said:

"It is your duty first to build up and maintain the Government day schools as indicated in your letter, and the Indian parents have no right to designate which school their children shall attend."

This was the "Browning ruling." It was ordered abrogated by President McKinley in 1901, and some eight months after, to wit, January 17, 1902, it was formally abrogated by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior.

The question of the use of the "Tribal Funds" was referred by President McKinley to the Secretary of the Interior, and by him to the Commissioner of Indian Affairs, who decided adversely to the appropriation on February 12, 1901.

28 17. On or about January 1, 1904, the matter of the application for the use of "Tribal Funds" for the education of Indian children in Mission Schools was brought to the attention of President Roosevelt by the "Bureau of Catholic Indian Missions," who urged that the Indians should be allowed to use their own money in educating their own children in the schools of their choice.

President Roosevelt took up the matter on January 22, 1904, at a meeting in the executive office of the White House at which were present the Attorney-General (Mr. Knox) and Mr. Russell, of the

Department of Justice, and Secretaries Hitchcock, Cortelyou and Wilson, and Postmaster-General Payne. The President was legally advised that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained.

The President decided that inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice.

A full and detailed statement of the action of the President in 1904 is set forth in his letter of February 3, 1905, which, with its enclosure, is herein set out at length:

"THE WHITE HOUSE,
WASHINGTON, *February* 3, 1905.

The Secretary of the Interior:

I have received from you the letter of the Commissioner of Indian Affairs, of January 31, 1905, in relation to the inquiries of the Hon. James S. Sherman as to the authority for granting contracts
29 for education of Indians in denominational schools. This letter of the Commissioner of Indian Affairs asks that the general questions raised in Mr. Sherman's letter of January 23rd be united with the special question raised by the Commissioner in his letter of January 21st and presented to the President for submission to the Attorney-General.

The letter of January 21st, concerning the payment of a claim filed in the Office of Insular Affairs in connection with the contract with St. Labre School, on the Tongue River Reservation, stands by itself and will be submitted to the Attorney-General for his consideration and report.

As regards the general question, I have received from the Attorney-General, under date of February 2, a letter, a copy of which is enclosed. Early in 1902 petitions on behalf of various Catholic and Episcopal schools were brought to my attention by certain ecclesiastics and laymen, who requested the Interior Department to distribute the rations and annuities through the mission schools of their several churches when the children were in the care of those schools. The Attorney-General decided that this request was illegal and could not properly be granted. Over a year afterwards the request was made, originally on behalf of certain Catholic schools in 1903, also on behalf of a Lutheran school in 1904, that where there were Indian moneys held in trust for the Indians by the Secretary of the Interior, the interest on these Indian moneys being distributed among the individual Indians or in such other ways as the Secretary of the Interior might direct, and where certain of the Indians petitioned that the moneys so distributed to them should be used for the support of the particular denominational school which they

desired their children to attend, this petition should be granted. The question raised was of course wholly different from that originally raised on behalf of the Episcopal Church and of the Catholic Church.

This new request was submitted to the Department of
30 Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to moneys belonging to the Indians themselves, and not to the public, and that these moneys belonging to the Indians themselves might be applied in accordance with the desire of the Indians for the support of the schools to which they were sending their children. There was, in my judgment, no question that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice. Care must be taken, of course, to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled. But if these two conditions are fulfilled, it is, in my opinion, just and right that the Indians themselves should have their wishes respected when they request that their own money—not the money of the public—be applied to the support of certain schools to which they desire to send their children. The practice will be continued by the Department unless Congress should decree to the contrary, or, of course, unless the courts should decide that the decision of the Department of Justice is erroneous.

It is, however, greatly to be desired that the bill introduced by Representative Lacey and providing for permission to allot these annuities in severalty to the Indians, exactly as is now done with land, should be enacted into law. Its enactment and administration would prevent the raising of any question of this character, for each individual Indian would then be left free to use the money to which he is entitled outright on his own initiative instead of having it used for him by the Secretary of the Interior in consequence of his petition. I earnestly hope that Congress will at once enact this bill into law.

31 The special case of the St. Labre school stands by itself, the question being whether the contract entered into is one authorized by the finding of the Department of Justice in January, 1904, or whether it is one of those cases forbidden under the decision of the Department of Justice of January, 1902. The Attorney-General will speedily report the category in which this case comes.

THEODORE ROOSEVELT."

Enclosure.

"DEPARTMENT OF JUSTICE,
WASHINGTON, *February 2nd*, 1905.

SIR: By your direction I submit a statement of what occurred in January, 1904, concerning your decision to permit the use of the

interest upon certain funds held in trust by the United States for the support of sectarian schools.

The question was raised whether a certain declaration of Congress in appropriating for Indian day and industrial schools precluded the use of the funds in question in that way, and Mr. Russell, of this Department, received a note from Secretary Hitchcock, dated January 19, 1904:

'The President has requested me to inform you that there will be a meeting at the Executive office of the White House at 3 p. m., on Friday next (22nd) to confer with reference to certain Indian matters recently brought to your notice, at which meeting the President requests your presence.'

The Attorney-General (Mr. Knox) and Mr. Russell, who had been considering the question, proceeded to the meeting, at which were present Secretaries Hitchcock, Cortelyou, and Wilson and Postmaster-General Payne. On behalf of the Attorney-General, a memorandum was submitted in favor of the legality of the use of the funds, and Secretary Hitchcock submitted a letter from the Commissioner of Indian Affairs. Thereupon the question was discussed at length and left for your determination.

32 Besides the memorandum referred to, there was a long one giving the reasons for the conclusion reached by the Attorney-General, the substance of which Mr. Russell stated.

The brief memorandum which was left with you was as follows, as appears by a copy retained at the Department of Justice:

'Partial list of Indian funds in the Treasury in trust for particular tribes, a portion of the interest on which funds may be used for educational purposes by the Secretary of the Interior under authority of the act of April 1, 1880 (21 Stat., 70), and other acts, without appropriation by Congress.'

These funds can be used for sectarian schools, but it would be well to do that otherwise than under contracts.

(1) Menominee fund: Interest, $7,651.96 per annum. (Treaty of 1848, art. 5, 9, Stat. L., 952).

(2) Menominee log fund: Interest, $76,313.98 per annum. (Act of Mar. 22, 1882, 22 Stat. L., 30; act of June 12, 1890, 26 Stat. L., 146).

(3) Osage fund: Interest, $416,371.95 per annum. (Treaty of 1865, art. 2, 14 Stat. L., 687; act of July 15, 1870, 16 Stat. L., 362; act of June 16, 1880, 21 Stat. L., 292.

(4) Sioux, $3,000,000 fund: Interest, $150,000 per annum. (Act of Mar. 2, 1889, 25 Stat. L., 895.)

The long memorandum (23 pages of typewriting) discussed the question substantially as follows:

It explained the history of educational work by the Government among the Indians before 1873, under act of March 3, 1819, appropriating $10,000 to be a permanent annual fund without reappropriation for the employment of teachers among the Indians. It explained the beginning of the contract system under President Grant, which had not existed under the act of 1818, and began after the act of 1870 appropriating $100,000 for the support of Indian

schools among Indian tribes not otherwise provided for, *i. e.*, among the tribes not having treaties containing stipulations providing funds for educational purposes. It showed the beginning
33 of the general annual appropriations for Indian schools in 1876 'for the support of industrial schools and other educational purposes for the Indian tribes,' that this appropriation, gradually increasing in amount, has practically continued until the present time; it set forth the language of the current appropriations of public money for Indian day and industrial schools, and the declaration of Congress following as a proviso of that language, viz: That it is 'the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,' and a subsequent declaratory proviso in the appropriation act for 1899, viz: 'This being the final appropriation for sectarian schools' (30 Stat. L., 942). It then took up the question of the effect of the declaration of Congress as to which Senator Vest said — debate (Cong. Rec., vol. 31, 3074):

'This drastic declaration in this bill declaring that Congress of the United States will not make any appropriation to a sectarian school of any denomination does not meet my concurrence.'

It argued from the second declaration above quoted and other things that the word 'appropriation' meant Congressional appropriation, and that what Congress declared was that Congress itself would not thereafter make appropriations to support sectarian schools, and not that the Secretary of the Interior was forbidden to 'appropriate' funds for that purpose under pre-existing laws. It quoted the reports of the Commissioner of Indian Affairs, Mr. Morgan, of 1891 and 1892, to show that the evil complained of by the opponents of Government aid to sectarian schools was that 'it is contrary to the letter and spirit of the Constitution of the United States, and utterly repugnant to our American institutions and our American history to take from the public moneys funds for the support of sectarian institutions,' and 'that no moneys from the public treasury should be devoted to sectarian or church institutions.'
34 It confirmed this idea that it was the use of public moneys of the United States or of the American people that was objected to by quoting the language of the Indian appropriation act of 1894 (28 Stat., 311), and a report of Secretary Hoke Smith, of December 13th, 1894 (H. Ex. Doc. No. 107, 53rd Cong., 3rd sess.), in which he said: 'I agree fully with those who oppose the use of public money for the support of sectarian schools.' It quoted the debates in Congress (53rd Cong., 3rd sess., Cong. Rec. vol. 27, pp. 2505, 994, 995, 1114, 2499, 2541, 2543, 2544; 54th Cong., 1st sess., Cong. Rec., vol. 28, pp. 1983, 2082, 2080, 2084) to show that the intention of Congress was to reduce the regular appropriation of public funds so as to get rid of contract schools aided by that appropriation of money belonging to the American people. It further showed that in the case of the Osage schools and mission schools on the Sac and Fox reservations in Oklahoma, Indian trust funds continued to be used and the contract system applied to them (Rept. Com. Ind. Aff., 1898, p. 17) after the declaration of Congress.

The argument of the memorandum briefly was that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained. For some of these laws, see 14 Stat., 687; 16 Stat., 362; 21 Stat., 292; 22 Stat., 30; 25 Stat., 895; 26 Stat., 146; *id.*, 344.

This was the legal advice given to you as to your authority to continue the use of the interest on certain Indian trust funds. It appeared in the discussion that some of the Indian tribes desired such use of their own moneys, and various reasons were given to show the advantage of continuing to support certain existing sectarian schools on account of their efficient work or special beneficial influence; but with these considerations the Department of Justice was not especially concerned.

Respectfully,

W. H. MOODY,
*Attorney-General.*

The President."

Accordingly the following contracts were made by the United States with various sectarian organizations for the education of Indian children from "Tribal Funds" for the fiscal year ending June 30, 1905:

| Name of School. | Denomination. | Pupils. | Tribe. | Rate per annum. | Total for year. |
|---|---|---|---|---|---|
| St. Joseph | Catholic | 170 | Menominee | $108 | $18,360 |
| St. Louis | Catholic | 75 | Osage | 125 | 9,375 |
| St. John | Catholic | 65 | Osage | 125 | 8,125 |
| Immaculate Conception | Catholic | 65 | Sioux | 108 | 7,020 |
| Holy Rosary | Catholic | 200 | Sioux | 108 | 21,600 |
| St. Francis | Catholic | 250 | Sioux | 108 | 27,000 |
| St. Labre | Catholic | 60 | Northern Cheyenne. | 108 | 6,480 |
| St. Mary | Catholic | 10 | Quapaw | 50 | 500 |
| Zoas' Boarding School | Lutheran | 40 | Menominee | 108 | 4,320 |
| Total | | 935 | | | $102,780 |

In June, 1905, the Commissioner of Indian Affairs was notified by the "Bureau of Catholic Indian Missions" that it was prepared to care for and educate during the fiscal year ending June 30, 1906, Indian pupils at the several schools carried on by it among the Sioux, Menominee, Osage, Northern Cheyenne, and Quapaw tribes upon the same terms and conditions as stipulated in its contracts for carrying on these schools for the fiscal year 1905 and requested that it be granted a renewal of the contracts in question, payable in each case from the trust and treaty funds of the tribe among which the school is located for the twelve months beginning July 1, 1905.

To this application the Commissioner replied that the request would receive careful consideration; that the applicability of the trust and treaty funds had been submitted to the proper authorities for a definite determination and indicated how petitions should be prepared, and the safeguards under which the signature of the Indians should be made. Petitions were duly filed, signed under all these safeguards, by the Catholic Indians.

In the meantime, the schools were opened at the usual time and instruction given to the required number of pupils in the confidence that the contracts applied for would be renewed.

The Attorney-General not having rendered any decision in the matter, the President, by a letter dated December 23, 1905, addressed to the Commissioner of Indian Affairs, after quoting a part of his letter of February 3, 1905, hereinbefore referred to, said:

"There are two kinds of Indian funds involved in this matter. One is the trust fund, which requires no appropriation by Congress, and which clearly is to be administered as the Indians themselves request. As regards this fund you will treat it on the assumption that the Indians have the right to say how it shall be used, so far as choosing the schools to which their children are to go is concerned; and each Indian is a tribe to be credited with his pro rata share of the funds which you will apply for him to the Government school where that is the school used, or to the church school where that is the school used, instead of segregating any portion of the fund for the support of the Government school and prorating the balance.

"The other fund consists of moneys appropriated by Congress in pursuance of treaty stipulations. As to these moneys it is uncertain as to whether or not the prohibition by Congress of their
37 application for contract schools applies—that is, whether or not we have the power legally to use these moneys as we clearly have the power to use the trust funds. It appears that certain of the contract schools are now being run in the belief that my letter quoted above authorized the use of the treaty funds. It would be a great hardship, in the absence of any clearly defined law on the subject, to cut them off at this time arbitrarily, and inasmuch as there is a serious question involved, I direct that until the close of the fiscal year these schools be paid for their services out of the moneys appropriated by Congress in pursuance of treaty obligations, on the same basis as the schools paid out of the trust funds—always exercising the precautions directed in my letter of February 3rd, 1905, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the pro rata proportion to which the Indians making the petition are entitled.' But no new contracts are to be entered into for such payments after the close of the present fiscal year, unless there is authorization by Congress or some determination by the courts."

Accordingly, the contracts for the fiscal year ending June 30, 1905, hereinafter set forth, were renewed for the fiscal year ending June 30, 1906, the new contracts being executed as of July 1, 1905.

The services have been performed under all these contracts and the money paid in all of them, except under the contract with the

"Bureau of Catholic Indian Missions" for the education of 250 Indian pupils at St. Francis Mission School on the Rosebud Reservation. The payment of the $27,000 which is due under this contract has been withheld pending the decision by this honorable court as to validity of the contract and the appropriation of tribal funds for such purposes.

38 18. And these defendants, specifically answering as to the contract in dispute, say:

That it is a contract made between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America and the "Bureau of Catholic Indian Missions," executed as of July 1, 1905, for the care, education, and maintenance of 250 Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at $108 per capita, per annum, amounting to $27,000. The contract was approved by Jesse E. Wilson, acting Secretary of the Interior.

Application for the contract was made by the "Bureau of Catholic Indian Missions" on June 6, 1905.

On March 26, 1906, a petition duly and genuinely signed by 212 members of the Sioux tribe of Indians of the Rosebud Agency, South Dakota, was filed asking that the said contract applied for be entered into with the Bureau.

The payments under the contract were to be made from the "Sioux Trust Fund" and the "Sioux Treaty Fund," as hereinbefore described, in the discretion of the Commissioner of Indian Affairs.

There are 4,986 Indians on the rolls of the Rosebud Reservation, and the amount of tribal income applicable to education, in the discretion of the Commissioner, is—

$250,047.90, or a per capital of $50.15.

The 212 petitioners represent 669 shares, or $33,550.35, and of this, they ask that $27,000 be used for the education of their children in St. Francis Mission School. The following table will represent the pro rata shares in these tribal funds, and the per capital share:

| | | |
|---|---|---|
| 4,986 Indians, | $250,047.90 | Tribal Funds $50.15 per capita. |
| 669 shares Petitions, | 33,550.35 | Tribal Funds $50.15 per capita. |
| 4,317 Petitions (non-petitions) | | |
| 4,986 | $250,047.90 | Tribal Funds $50.15 per capita. |

39 The cost of the Government school for the fiscal year was about $76,830. Since the shares of the petitioning Indians amount to $33,550.35 and the sum asked for the school is only $27,000 out of this share, and the petitions were genuinely signed, the terms of the executive order of President Roosevelt of February 3d, 1905, *e. g.*, "to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the pro rata proportion to which the Indians making the petition are entitled" have been strictly carried out.

The services under this contract have been fully performed to the satisfaction of the Commissioner of Indian Affairs, and the twenty-seven thousand dollars ($27,000) agreed to be paid is due and payable, if this honorable court determines that it is legally payable out of the "Sioux Trust Fund" and the "Sioux Treaty Fund."

19. In connection with the sections of acts of Congress cited in the bill, these defendants, further answering, say:

That on December 13, 1905, Mr. Stephens introduced in the House of Representatives the following bill:

"A BILL TO PROHIBIT THE USE OF INDIAN TRUST FUNDS FOR THE PURPOSE OF EDUCATING INDIAN CHILDREN IN SECTARIAN SCHOOLS.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in the administration and disbursement of funds held in trust for the Indian tribes by the United States that part of the act of June 7, 1897 (Thirteenth Statutes, page 79), which provides, 'and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,' shall apply to any trust fund or interest thereon held by this Government for the benefit of any Indian tribes by the United States, and no such trust funds shall be appropriated or used for purposes of education in any sectarian or denomination school so long as such trust fund belongs to any Indian tribe."

The bill did not pass, but was laid on the table in the Committee on Indian Affairs, to whom it had been referred.

These defendants further say that when the Senate of the United States was considering the Indian Appropriation Bill for the fiscal year ending June 30, 1906, it passed an amendment reported by the Committee on the District of Columbia as amended by Senator McCumber.

The original amendment was in these words:

"That no portion of the funds appropriated by this act, nor the principal nor interest of any Indian Trust or Tribal Funds held by the United States for the benefit of any Indian tribe shall be available, nor be expended for the support of any sectarian or denominational school."

This amendment was not passed by the Senate in this form, but as amended by Senator McCumber as follows:

"Provided, however, that the individual owner or beneficiary of any interest in such fund who may desire to educate his ward, child or children in any school other than a Government school, may, by written order signed by him, direct that any portion of the interest accruing to him, or which would be allotted to him on such fund, be paid to the school in which such ward, child or children may be educated."

No part of the amendment, however, was passed by Congress, the whole being eliminated from the bill in conference committee, whose report was adopted.

These defendants further say as showing the attitude of Congress, that on February 10, 1902, there was a decision by the then
41 Attorney-General that the rations to which the Sioux Indians were entitled under the agreement ratified by act of Congress of February 28, 1877 (19th Stat. L., 254), could not be distributed to children in the mission schools.

The effect of this was that rations were distributed to children who remained at home in ignorance and away from school, and were also distributed to children who attended Government schools, but those children who attended mission schools were deprived of the rations.

In the Indian Appropriation Act for the fiscal year ending June 30, 1907, Congress enacted as follows:

"Mission schools on an Indian reservation, may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulation if such children were living with their parents."

These defendants further say that Congress, by an act approved June 28, 1906, "for the division of land and funds of the Osage Indians in Oklahoma Territory and for other purposes," enacted, among other things, as follows:

"There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School, and for other schools on the Osage Indian Reservation conducted, or to be established, and conducted for the education of Osage children."

There are three schools on the Osage Indian reservation conducted for the education of Osage children: The Osage Boarding School, the St. Louis School for Girls, and the St. John School for Boys; the first is a Government school, the latter two are Catholic
42 Mission Schools, for whom as hereinbefore stated, contracts have been made uninterruptedly for a great number of years, for the education of Indian children of the Osage tribe, payable out of Osage Treaty Funds.

And the defendants, having fully answered the bill, pray to be hence dismissed with their costs.

CHAS. H. TREAT.
ROBERT J. TRACEWELL.

DISTRICT OF COLUMBIA, *ss:*

We, F. E. Leupp, E. A. Hitchcock, Leslie M. Shaw, Charles H. Treat and Robert J. Tracewell, do each solemnly swear that we have read the foregoing answer by us subscribed, and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true.

F. E. LEUPP.
E. A. HITCHCOCK.
L. M. SHAW.
CHAS. H. TREAT.
ROBERT J. TRACEWELL.

DANIEL W. BAKER,
*U. S. Attorney in & for D. C.*

Subscribed and sworn to by the said F. E. Leupp, and E. A. Hitchcock, before me this nineteenth day of December, A. D., 1906.

[SEAL.] W. BERTRAND ACKER,
*Notary Public in and for D. C.*

43 Subscribed and sworn to before me by Chas. H. Treat and Robert J. Tracewell this nineteenth day of December A. D. 1906.

[SEAL.] HIRAM W. BARRETT,
*Notary Public for the D. C.*

Subscribed and sworn to before me, by Leslie M. Shaw, this twentieth day of December, 1906.

[SEAL.] JAS. N. FITZPATRICK,
*Notary Public, D. C.*

44 PLAINTIFF'S EXHIBIT No. 1.

Refer in reply to the following:
Finance 7308/1907.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *January* 31, 1907.

Mr. Charles C. Binney, 703 North American building, Philadelphia, Pennsylvania.

SIR: I am in receipt of your communication of the 22nd instant, saying that as associate counsel with Mr. S. M. Brosius, the plaintiff's attorney of record in the case of Quick Bear *et al. vs.* Leupp *et al.*, Equity number 26271, in the Supreme Court of the District of Columbia, you have secured the consent of the United States Attorney to ask me certain questions, with the understanding that after my answers have been received further questions may be asked by him, and that all the information so furnished shall be treated as evidence in the case. The questions which you wish to ask are as follows:

1. What was the amount of the share of the Sioux Tribe of Indians of the Rosebud Agency in the Sioux Treaty Fund appropriated for the fiscal year 1905-'06?
2. What was the amount of the share of the Sioux Tribe of Indians of the Rosebud Agency in the income of the Sioux Trust Fund in the fiscal year 1905-'06, available for education?
3. What was the cost of the maintenance of the government school or schools at the Rosebud Agency for the fiscal year 1905-'06?
4. How much of this cost was paid out of the Sioux Treaty Fund, and how much out of the income of the Sioux Trust Fund?
5. What part, if any, of the cost of maintenance of the government schools was charged against the 669 shares covered by the petition for a contract with the St. Francis Mission School, or was the whole amount charged against the shares of the non-petitioning Indians?

45 6. What amounts have been paid from any Indian Treaty Funds or from the income of any Indian Trust Funds, for the support of sectarian schools for the fiscal years 1896–'97 to 1905–'06, inclusive? The answer should give full details as to all the payments, stating whether Treaty Funds or Trust Funds in each instance.

The answers to your questions are as follows:

| | |
|---|---|
| 1. Subsistence and Civilization | $168,277.50 |
| Education, Sioux Nation | 54,098.50 |
| | $222,375.60 |
| 2. Interest on Sioux Fund Rosebud (Education) | $17,245.48 |
| 3. $76,836.00 | |
| 4. Interest on Sioux Trust Fund | $14,760.00 |
| Treaty (Subsistence and Civilization and Education, Sioux Nation) | 62,076.00 |
| | $76,836.00 |

5. The funds proposed to be used for payments under this contract are the Trust and Treaty Funds named in the contract. These funds are not divided *pro rata*, and the shares of the Indians are computed on a theoretical basis, and cannot be reduced to a practical one unless actually divided; therefore, no part of the cost of maintaining the Government schools would be charged specifically against the 669 shares covered by the petition for a contract with St. Francis Mission School; nor would the whole amount be charged against the shares of the non-petitioning Indians, but the cost would be against the entire amount of the funds, and the cost of the Mission school would be charged to the same funds, thus making each class of Indians ratably bear the cost of each kind of school—Government and Mission.

6.

| | Treaty funds. | Int. on trust funds. |
|---|---|---|
| 1896–7 | $28,083.40 | $8,959.67 |
| 1897–8 | 36,656.56 | 3,105.00 |
| 1898–9 | 19,887.71 | 14,416.41 |
| 1899–00 | 14,237.08 | 10,451.28 |
| 1900–1 | 3,015.62 | 9,767.50 |
| 1901–2 | 3,456.00 | 6,814.01 |
| 1902–3 | 3,456.00 | 5,043.50 |
| 1903–4 | 3,456.25 | 13,790.47 |
| 1904–5 | 66,758.72 | 23,935.76 |
| 1905–6 | 28,063.52 | 26,115.05 |
| | $207,070.86 | $122,398.65 |

Very respectfully,

F. E. LEUPP,
*Commissioner.*

W. W. McC. (O.)

46 PLAINTIFF'S EXHIBIT NO. 2.

Refer in reply to the following:
Finance
11986/1907
Enclosures.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 13, 1907.

Mr. Charles C. Binney, 703 North American Building, Philadelphia, Pennsylvania.

SIR: I have received your letter of the 5th instant, acknowledging receipt of Office letter of the 31st ultimo, wherein certain information requested in your letter of the 22nd ultimo was furnished. You ask for a supplemental answer to your question No. 5, showing to what extent, if at all, "the total balance which would eventually be divided per capita in some form" among the Sioux Indians on the Rosebud Reservation is reduced by the expenditure of tribal money for the support of the St. Francis Mission School.

You also ask for fuller details in reply to question No. 6, showing a statement of each payment made for the support of any sectarian school, giving the name of the school, the amount of the payment, the name of the fund drawn upon and of the tribe whose fund was so used.

The answers, in the manner indicated by you, are herewith enclosed. You will observe a slight increase in the amounts for 1897 and 1898 owing to another school's being now included which
47 was overlooked in the former statement.

Very respectfully, F. E. LEUPP, *Commissioner.*

48 *Answer No. 5.*

In explanation of the statement quoted in your letter you are advised that at the time the instructions were issued it was the purpose to use all Treaty and Trust Funds, but afterward it was determined to limit payments to the same funds out of which the Government Schools were supported. This eliminated the fund out of which per capita payments to the Indians were made, and confined the payments to those funds which are not susceptible of equal division. Theoretically, however, any diversion of tribal money for the support of this mission school reduces the total balance due the tribe by the amount so used; practically, in the case in point it does not, as there is no per capita division of any balance of the funds utilized for these payments. The petitioners theoretically and practically contribute to the support of the Government School, while the non-petitioners in like manner contribute to the support of the mission school; but as there is no actual per capita division of the balance, the reduction so made can have no possible bearing except as an academic proposition.

1894–'95.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 30, '94 | $1504.17 | | |
| | Jan. 22, '95 | 1562.50 | Interest on Osage Fund..... | Osage. |
| | Apr. 10, '95 | 1562.50 | | |
| | Jul. 20, '95 | 1562.50 | | |
| St. John's Boarding, Gray Horse, Okla. | Nov. 6, '94 | 1242.70 | | |
| | Jan. 22, '95 | 1250.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 13, '95 | 1250.00 | | |
| | Jul. 9, '95 | 1250.00 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 11, '94 | 3721.50 | | |
| | Jan. 18, '95 | 3780.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 8, '95 | 3780.00 | | |
| | Jul. 12, '95 | 3780.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 12, '94 | 2565.00 | | |
| | Jan. 16, '95 | 2565.00 | Education Sioux Nation ..... | Rosebud Sioux. |
| | Apr. 10, '95 | 2565.00 | | |
| | Jul. 16, '95 | 2565.00 | | |
| St. Mary's Industrial, Sacred Hart, Okla. | Feb. 25, '95 | 1260.00 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 25, '95 | 1260.00 | | |
| | May 7, '95 | 1122.84 | | |

Treaty ..... $30,032.46
Trust ..... 11,184.37



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| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 18, '95 | 1562.50 | | |
| | Jan. 9, '96 | 1562.50 | Interest on Osage Fund..... | Osage. |
| | Apr. 13, '96 | 1562.50 | | |
| | Jul. 9, '96 | 1562.50 | | |
| St. John's Boarding, Gray Horse, Okla. | Oct. 16, '95 | 2463.81 | | |
| | Jan. 9, '96 | 1250.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 23, '96 | 1250.00 | | |
| | Jul. 10, '96 | 1250.00 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 19, '95 | 3456.00 | | |
| | Jan. 14, '96 | 3780.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 21, '96 | 3780.00 | | |
| | Aug. 18, '96 | 3780.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 14, '95 | 2565.00 | | |
| | Jan. 20, '96 | 2565.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 14, '96 | 2565.00 | | |
| | Jul. 10, '96 | 2565.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Nov. 29, '95 | 1431.60 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 11, '96 | 1588.69 | | |
| | May 7, '96 | 1377.49 | | |
| | Sept. 26, '96 | 1326.46 | | |
| St. Benedict's School, Sacred Heart, Okla. | Feb. 1, '96 | 1107.06 | Fulfilling treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 1, '96 | 1305.00 | | |

Treaty..... $33,192.30
Trust..... 12,463.81

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| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| Grace Mission, Crow Creek, S. Dak. | Jan. 13,'97 | $875.00 | Education Sioux Nation..... | Crow Creek. |
| | Feb. 6,'97 | 301.40 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 31,'96 | 1562.50 | Interest on Osage Fund..... | Osages. |
| | Jan. 12,'97 | 1562.50 | | |
| | Apr. 7,'97 | 1562.50 | | |
| | Jul. 14,'97 | 1562.50 | Fulfilling Treaties with Osages. | |
| St. John's Boarding, Gray Horse, Okla. | Oct. 31,'96 | 1201.04 | Interest on Osage Fund..... | Osages. |
| | Jan. 12,'97 | 1250.00 | | |
| | Apr. 19,'97 | 1250.00 | | |
| | Jul. 14,'97 | 1250.00 | Fulfilling Treaties with Osages. | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Nov. 18,'96 | 3375.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Jan. 27,'97 | 3375.00 | | |
| | Apr. 27,'97 | 3375.00 | | |
| | Aug. 5,'97 | 3375.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 29,'96 | 2430.00 | | |
| | Jan. 6,'97 | 2430.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 7,'97 | 2430.00 | | |
| | Jul. 13,'97 | 2430.00 | | |
| Immaculate Conception, Crow Creek, S. Dak. | Jan. 14,'97 | 810.00 | Education Sioux Nation..... | Crow Creek Sioux. |
| | Apr. 9,'97 | 810.00 | | |
| | Jul. 10.'97 | 810.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Dec. 4,'96 | 988.80 | Fulfilling Treaties with Pottawatomies, Education. | Citizen Band Pottawatomies. |
| | Feb. 3,'97 | 1614.04 | | |
| | Apr. 29,'97 | 1690.80 | | |
| | Jul. 24,'97 | 1547.60 | | |

Treaty ..... $35040.14
Trust ..... 8388.54

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 16, '97 | $1354.17 | Fulfilling Treaties with Osages.. | Osage. |
| | Jan. 20, '98 | 2343.75 | | |
| | Apr. 7, '98 | 2140.62 | | |
| | Jul. 14, '98 | 1603.33 | | |
| | Jul. 14, '98 | 521.67 | Interest on Osage Fund. | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 27, '97 | 1127.08 | Fulfilling Treaties with Osages. | |
| | Jan. 20, '98 | 1757.47 | | |
| | Apr. 8, '98 | 851.68 | Interest on Osage Fund..... | Osage. |
| | | 898.32 | | |
| | Jul. 13, '98 | 1852.67 | Fulfilling Treaties with Osages. | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 27, '97 | 3105.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Jan. 19, '98 | 3105.00 | | |
| | Jul. 21, '98 | 3105.00 | | |
| | Apr. 23, '98 | 3105.00 | Interest on Sioux Fund Pine Ridge. | |
| St. Francis Boarding, Rosebud Agency, S. Dakota. | Oct. 27, '97 | 2187.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Jan. 21, '98 | 2187.00 | | |
| | Apr. 7, '98 | 2187.00 | | |
| | Jul. 8, '98 | 2187.00 | | |
| Sacred Heart Boarding, Sacred Heart, Okla. | Oct. 28, '97 | 1070.40 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 17, '98 | 1140.26 | | |
| | Apr. 22, '98 | 990.00 | | |
| | Jul. 14, '98 | 810.59 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 27, '97 | 1872.00 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 18, '98 | 1707.26 | | |
| | Apr. 25, '98 | 1616.00 | | |
| | Jul. 26, '98 | 1296.00 | | |
| | | Treaty..... | $40744.60 | |
| | | Trust..... | 5376.67 | |

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 14, '98 | $1812.50 | | |
| | Jan. 11, '99 | 2091.03 | Interest on Osage Fund..... | Osage. |
| | Apr. 18, '99 | 1929.16 | | |
| | Jul. 15, '99 | 2026.09 | | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 14, '98 | 1493.75 | | |
| | Jan. 19, '99 | 1875.00 | Interest on Osage Fund..... | Osage. |
| | Apr. 18, '99 | 1595.13 | | |
| | Jul. 17, '99 | 1593.75 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 18, '98 | 2322.00 | | |
| | Jan. 21, '99 | 2322.00 | Education, Sioux Nation ..... | Pine Ridge Sioux. |
| | Apr. 27, '99 | 2322.00 | | |
| | Jul. 21, '99 | 2322.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 10, '98 | 1647.00 | | |
| | Jan. 9, '99 | 1647.00 | Education, Sioux Nation ..... | Rosebud Sioux. |
| | Apr. 15, '99 | 1647.00 | | |
| | Jul. 17, '99 | 1647.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 14, '98 | 693.75 | Fulfilling Treaties with Pottawatomies, "Education." | Citizen Pottawatomies. |
| | Jan. 31, '99 | 1088.99 | | |
| | Apr. 19, '99 | 1148.61 | | |
| | Jul. 26, '99 | 1080.36 | | |

Treaty..... $19,887.71
Trust..... 14,416.41

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 14, '99 | $1484.37 | Interest on Osage Fund..... | Osages. |
| | Jan. 13, '00 | 2109.37 | | |
| | Apr. 14, '00 | 2041.66 | Fulfilling treaties with Osages... | Osages. |
| | Jun. 5, '00 | 1162.43 | Interest on Osage Fund..... | Osages. |
| | Jul. 19, '00 | 883.92 | | |
| Holy Rosary Boarding, Pine Ridge, S. Dak. | Oct. 23, '99 | 1080.00 | Education, Sioux Nation..... | Pine Ridge Sioux. |
| | Jul. 19, '00 | 1080.00 | | |
| | Apr. 23, '00 | 1080.00 | | |
| | Aug. 13, '00 | 1080.00 | | |
| St. Francis Boarding, Rosebud, S. Dak. | Oct. 23, '99 | 810.00 | Education, Sioux Nation..... | Rosebud Sioux. |
| | Jan. 10, '00 | 810.00 | | |
| | Apr. 9, '00 | 810.00 | | |
| | Jul. 7, '00 | 810.00 | | |
| St. Mary's Academy, Sacred Heart, Okla. | Oct. 24, '99 | 729.17 | Fulfilling treaties with Pottawotamies, "Education." | Citizen Pottawatomies. |
| | Jan. 31, '00 | 843.75 | | |
| | Apr. 14, '00 | 843.75 | | |
| | Jul. 18, '00 | 843.75 | | |
| St. John's Boarding, Hominy Creek, Okla. | Oct. 16, '99 | 1125.00 | Interest on Osage Fund..... | Osages. |
| | Jan. 13, '00 | 1487.09 | | |
| | Apr. 14, '00 | 1375.00 | Fulfilling treaties with Osages... | Osages. |
| | Jun. 5, '00 | 750.00 | Interest on Osage Fund..... | Osages. |
| | Jul. 19, '00 | 549.10 | | |
| Kate Drexel Boarding, Umatilla Reservation, Oregon. | Jan. 25, '00 | 300.00 | Interest on Umatilla General Fund. | Umatillas. |
| | Apr. 14, '00 | 300.00 | | |
| | Jul. 13, '00 | 300.00 | | |

Treaty ..... $14237.08
Trust..... 10451.28

55 1900–1901.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Nov. 19, '00 | $1875.00 | Fulfilling Treaties with Osages.. | Osages. |
| | Feb. 12, '01 | 1875.00 | | |
| | May 7, '01 | 1875.00 | Interest on Osage Fund..... | Osages. |
| | Jul. 16, '01 | 1875.00 | | |
| St. John's Boarding, Hominy Creek, Okla. | Nov. 19, '00 | 1140.62 | Fulfilling Treaties with Osages.. | Osages. |
| | Feb. 1, '01 | 1357.33 | | |
| | May 1, '01 | 1388.54 | Interest on Osage Fund. | |
| | Jul. 15, '01 | 1396.63 | | |
| | | Treaty ..... | $3015.62 | |
| | | Trust ..... | 9767.50 | |

56 1901–1902.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Oct. 23, '01 | $937.50 | Fulfilling Treaties with Osages.. | |
| | Jan. 18, '02 | 1031.25 | Interest on Osage School Fund.. | Osages. |
| | Apr. 7, '02 | 1134.37 | Interest on Osage Fund. | |
| | Jul. 24, '02 | 1166.89 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 23, '01 | 1500.00 | Fulfilling Treaties with Osages. | |
| | Jan. 18, '02 | 1018.50 | | |
| | Apr. 17, '02 | 1500.00 | Interest on Osage Fund. | |
| | Jan. 18, '02 | 481.50 | Interest on Osage School Fund.. | Osages. |
| | Jul. 24, '02 | 1500.00 | Interest on Osage School Fund. | |
| | | Treaty ..... | $3456.00 | |
| | | Trust ..... | 6814.01 | |

1902–1903.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Jan. 24, '03 | $666.67 | Fulfilling Treaties with Osages.. | |
| | Feb. 5, '03 | 1062.50 | | |
| | May 6, '03 | 1062.50 | Interest on Osage Fund..... | Osages. |
| | Jul. 17, '03 | 1062.50 | Interest on Osage School Fund. | |
| St. Louis Boarding, Pawhuska, Okla. | Feb. 3, '03 | 1083.33 | Fulfilling Treaties with Osages. | |
| | Feb. 25, '03 | 643.50 | | |
| | Feb. 25, '03 | 544.00 | Interest on Osage School Fund. | |
| | May 6, '03 | 1187.50 | Interest on Osage Fund..... | Osages. |
| | Jul. 17, '03 | 1187.50 | Interest on Osage School Fund. | |
| | Treaty ..... | | $3456.00 | |
| | Trust ..... | | 5043.00 | |



1903–1904.

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | Oct. 22, '03 | $656.25 | Fulfilling Treaties with Osages.. | Osages. |
| | Jan. 16, '04 | 656.25 | | |
| | May 4, '04 | 1375.00 | Interest on Osage Fund. | |
| | Jul. 20, '04 | 1343.75 | | |
| St. Louis Boarding, Pawhuska, Okla. | Oct. 22, '03 | 750.00 | Fulfilling Treaties with Osages. | |
| | Jan. 25, '04 | 750.00 | | |
| | May 4, '04 | 1515.84 | Interest on Osage Fund..... | Osages. |
| | May 4, '04 | 643.50 | Fulfilling Treaties with Osages. | |
| | Jul. 14, '04 | 2187.50 | Interest on Osage Fund. | |
| St. Joseph's Industrial, Green Bay, Wis. | Apr. 19, '04 | 3337.37 | Interest on Menomonee Log Fund. | Menomonees. |
| | Jul. 14, '04 | 4031.01 | | |
| | Treaty..... | | $3457.00 | |
| | Trust..... | | $13790.47 | |

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. Louis Boarding, Pawhuska, Okla. | Oct. 25,'04 | $2031.25 | Fulfilling Treaties with Osages. | |
| | Jan. 28,'05 | 2096.81 | Interest on Osage School Fund. | |
| | Apr. 19,'05 | 2149.65 | Interest on Osage Fund..... | Osages. |
| | Jul. 28,'05 | 1964.63 | Fulfilling Treaties with Osages. | |
| St. John's Boarding, Hominy Creek, Okla. | Nov. 7,'04 | 1343.75 | Fulfilling Treaties with Osages.. | Osages. |
| | Jan. 28,'05 | 81.00 | | |
| | Jul. 28,'05 | 1301.84 | | |
| | Jan. 28,'05 | 1389.10 | Interest on Osage Fund. | |
| | Apr. 18,'05 | 1395.83 | | |
| Holy Rosary Mission, Pine Ridge, S. Dak. | Nov. 12,'04 | 4617.00 | | |
| | Feb. 6,'05 | 5400.00 | Education Sioux Nation..... | Pine Ridge Sioux. |
| | Apr. 12,'05 | 5400.00 | | |
| | Aug. 21,'05 | 5400.00 | | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Oct. 27,'04 | 1755.00 | | |
| | Jan. 10,'05 | 1755.00 | Education Sioux Nation..... | Crow Creek Sioux. |
| | Jun. 2,'05 | 1537.80 | | |
| | Jul. 28,'05 | 1542.26 | | |
| | Jun. 2,'05 | 217.20 | Support of Sioux, Yankton Tribe, 1905. | Yankton Sioux. |
| | Jul. 28,'05 | 212.74 | | |
| St. Francis Mission, Rosebud, S. Dak. | Nov. 5,'04 | 6641.10 | | |
| | Jan. 16,'05 | 6750.00 | Education Sioux Nation..... | Rosebud Sioux. |
| | Apr. 10,'05 | 6750.00 | | |
| | Jul. 28,'05 | 6750.00 | | |
| St. Joseph Industrial, Green Bay, Wis. | Oct. 25,'05 | 4140.00 | | |
| | Jan. 19,'05 | 4413.91 | Interest on Menomonee Log Fund. | Menomonees. |
| | Apr. 8,'05 | 4329.60 | | |

| | | | | |
|---|---|---|---|---|
| Zoar Indian Missions, Green Bay, Wis. | Jul. 12, '05 | 3660.72 | | |
| | Nov. 2, '04 | 58.50 | | |
| | Feb. 4, '05 | 82.46 | Interest on Menomonee Log Fund. | Menomonees. |
| | Apr. 18, '05 | 91.18 | | |
| | Jul. 28, '05 | 128.76 | | |
| St. Labres Mission, Tongue River, Mont. | Jun. 2, '05 | $1620.00 | Support of Northern Cheyenne & Arapohoes Subsistence and Civilization, 1905. | Northern Cheyennes. |
| | Au 8, '05 | 1620.00 | | |
| | Aug , '05 | 1620.00 | | |
| St. Mary's Boarding, Quapaw Agency, I. T. | Feb. 11, '05 | 250.00 | Support of Quapaws Education.. | Quapaws. |
| | Apr. 12, '05 | 125.00 | | |
| | Aug. 4, '05 | 125.00 | | |

Treaty..... $66,810.57
Trust..... 23,936.52

| Name of school. | Date of payments. | Amount of payments. | Name of fund. | Name of tribe. |
|---|---|---|---|---|
| St. John's Boarding, Hominy Creek, Okla. | May 11, '06 | $1093.75 | | |
| | May 11, '06 | 1146.05 | Interest on Osage Fund..... | Osages. |
| | May 12, '06 | 1067.70 | | |
| | Jul. 17, '06 | 1093.75 | | |
| St. Louis Boarding, Pawhuska, Okla. | May 11, '06 | 3421.64 | Interest on Osage Fund..... | Osages. |
| | May 12, '06 | 1938.54 | | |
| | Jul. 18, '06 | 2044.30 | Fulfilling Treaties with Osages. | |
| | May 11, '06 | 189.52 | | |
| St. Joseph's Industrial, Green Bay, Wis. | May 17, '06 | 3474.90 | | |
| | May 17, '06 | 3453.65 | Interest on Menomonee Log Fund. | Menomonees. |
| | May 17, '06 | 3137.10 | | |
| | Jul. 11, '06 | 3856.55 | | |
| St. Mary's Boarding, Quapaw Agency, I. T. | Jun. 1, '06 | 375.00 | Support of Quapaws, Education. | Quapaws. |
| | Jul. 2, '06 | 125.00 | | |
| Holy Rosary, Pine Ridge, S. Dak. | Jun. 16, '06 | 5400.00 | Support of Sioux of different Tribes, Subsistence & Civilization, 1906. | |
| | Jun. 16, '06 | 5400.00 | | |
| | Jun. 16, '06 | 5400.00 | | |
| | Jul. 21, '06 | 5400.00 | Interest on Sioux Fund, Pine Ridge .....$2194. | Pine Ridge Sioux. |
| | | | Support of Sioux, etc., 1906 .....$3206. | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Jun. 25, '06 | 864.00 | Support of Sioux, etc., 1906 .....$1868.83 | Crow Creek Sioux. |
| | Jun. 25, '06 | 938.83 | | |
| | Jun. 25, '06 | 918.00 | Education Sioux Nation..... $852.00 | |
| | Jul. 24, '06 | 950.93 | Interest on Sioux Fund, Crow Creek..... $113.66 | |
| | | | Support of Sioux, etc., 1906..... $837.27 | |

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| | | | | |
|---|---|---|---|---|
| St. Labres Mission, Tongue River, Mont. | Jul. 26, '06 | $1053.00 | Support of Northern Cheyennes and Arapahoes: Subsistence and Civilization, 1906. | Northern Cheyennes. |
| | Jul. 26, '06 | 1053.00 | | |
| | Jul. 26, '06 | 1053.00 | | |
| | Jul. 26, '06 | 1053.00 | | |
| Immaculate Conception Mission, Crow Creek Agency, S. Dak. | Aug. 1, '06 | 54.00 | Education Sioux Nation $48.00 | |
| | Aug. 1, '06 | 54.00 | Support of Sioux etc. 1906, 150.00 | |
| | Aug. 1, '06 | 54.00 | Interest in Sioux Fund, Lower Brule, 18.00. | |
| | Aug. 1, '06 | 54.00 | | |

Treaty..... $28,063.62
Trust..... 26,115.05

63 PLAINTIFF'S EXHIBIT No. 3.

Refer in reply to the following:
Finance.
15672/1907.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 23, 1907.

Charles C. Binney, 703 North American Building, Philadelphia, Pennsylvania.

SIR: I am in receipt of your letter of the 14th instant, asking for further information in connection with the detailed statement furnished you on the 13th instant which showed the amount of each payment for the support of any sectarian school paid from Indian treaty or trust funds for the fiscal years 1896-7 to 1905-6, the name of the school, name of fund and of the tribe whose fund was used.

The questions you now ask, with the answer immediately after each, are as follows:

Q. Is the Grace Mission School mentioned in the statement for 1896-7, the same as Grace Howard Mission Boarding School, mentioned on page 11 of the Indian Commissioner's Report for 1895? A. Yes.

Q. Is the St. Louis Boarding School, mentioned in the statement for 1896-7, the same as the Pawhuska Boarding School, mentioned in the Indian Commissioner's Report for 1894, page 16, in that for 1895, page 12, and in that for 1896, page 16? A. Yes.

64 Q. Is the St. John's Boarding School at Gray Horse, mentioned in the statement for 1896-7, the same as St. John's Hominy Creek, mentioned in the Indian Commissioner's Report for 1896, page 16? A. Yes.

Q. Is St. Mary's Academy, mentioned in the statement for 1896 and 7, at Sacred Heart, the same as the Sacred Heart School, mentioned in the Indian Commissioner's Report for 1896, page 16? A. Yes.

Q. I find that my original question 6 should have covered the years 1894-5 and 1895-6. I must therefore ask for a tabulated statement for those years, similar to the statements contained in your letter of the 5th instant. A. Statements for 1895 and 1896 attached.

Very respectfully,

F. E. LEUPP, *Commissioner.*

WWMcC (0).

65 *Decree.*

Filed April 15, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,

*v.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

This case came on to be heard at this term upon the bill, the answer, and certain proofs consisting of replies made by the Commissioner of Indian Affairs to certain questions asked in behalf of the plaintiffs, and also of certain statements in the reports of the Commissioner of Indian Affairs for the years 1895 to 1906 inclusive, and was argued by counsel, and thereupon, upon consideration thereof, it is this 15th day of April, 1907, ordered, adjudged and decreed as follows: That an injunction issue against all of the defendants, and their present successors in office in the case of such of the said defendants as are no longer in office, perpetually restraining them *for* paying or authorizing the payment of, either by themselves or by any of their subordinate officers or agents whatever, any moneys of the Sioux treaty fund, referred to in the said bill and answer, appropriated for the uses of the Sioux tribe of Indians, to the Bureau of Catholic Indian Missions, at Washington, D. C., for the support, education, or maintenance of any Indian pupils of the said Sioux tribe, at the St. Francis Mission Boarding School on the Rosebud Reservation in the State of South Dakota, as provided in the contract referred to in the said bill and answer, and that the defendants be further restrained from drawing, countersigning and paying any warrants in favor of the said Bureau of Catholic Indian Missions, for the purpose aforesaid, payable out of the said Sioux treaty fund; and

66

It is further ordered, adjudged, and decreed that so much of the prayer of the said bill as asks that an injunction issue against the defendants restraining them from paying or authorizing the payment of any of the interest of the Sioux trust fund to the said Bureau of Catholic Indian Missions under the said contract, be refused; and

It is further ordered and adjudged that each party pay the respective costs by each incurred.

ASHLEY M. GOULD, *Justice.*

67 *Application for an Appeal by Plaintiffs.*

Filed April 15, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,

*v.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

Come now the plaintiffs, by their solicitor, Samuel M. Brosius, and give notice of and make application for an appeal to the Court of Appeals of the District of Columbia, from so much of the decree of this Honorable Court entered on the 15th day of April, 1907, as refuses that portion of the prayer of the plaintiffs' bill which asks that an injunction shall issue against the defendants, restraining them from paying or authorizing any payment of the interest of the Sioux trust fund to the Bureau of Catholic Indian Missions under the contract referred to in the said bill.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

68 Due service of the above application is hereby acknowledged this 15 day of April, 1907.

DANIEL W. BAKER,
*U. S. Attorney, D. C.*

Appeal allowed and bond for costs fixed at $100.

ASHLEY M. GOULD.

*Order for Amendment of Appeal.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia, the 19th Day of April, 1907.

Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Plaintiffs,

*vs.*

FRANCIS E. LEUPP ET AL., Defendants.

The Clerk of said Court will amend the appeal already filed for the plaintiffs in this case by adding these words: and also from so

much of the said decree as imposes upon the plaintiffs any portion of the costs.

SAMUEL M. BROSIUS,
*Attorney for Plaintiffs.*

*Notice of Appeal by Defendants from Decree of April 15/07.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Complainants,
*vs.*
FRANCIS E. LEUPP ET AL., Defendants.

Now comes the defendants and pray an appeal to the
69 Court of Appeals from so much of the decree entered herein on the 15th day of April, 1907, as enjoins the said defendants from making any payments under the contract mentioned in these proceedings out of the Treaty Funds mentioned herein.

DANIEL W. BAKER,
*U. S. Att'y, Attorney for Defendants.*

*Stipulation.*

Filed April 19, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and all Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Plaintiffs,
*v.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury, Defendants.

It is hereby stipulated and agreed by and between the counsel representing the parties to this cause that the amount which was to have been paid from the Sioux treaty fund under the contract in regard to which this suit is brought is approximately $24,000.

It is further agreed that the reports of the Commissioner
70 of Indian Affairs for the years 1894 to 1904 inclusive shall be exhibits in this case, in order that among others certain portions of them may be treated as evidence, as follows:

| | | |
|---|---|---|
| 1894.. | Pages 16-18 | Government Aid to Contract Schools |
| 1895.. | " 10-13 | Government Aid to Contract Schools |
| 1896.. | " 14-17 | Contract School System |
| 1897.. | " 12-15 | Contract Schools |
| 1898.. | " 15-17 | Contract Schools |
| 1899.. | " 16-19 | Contract Schools |
| 1900.. | " 23-28 | Contract Schools |
| 1901.. | " 26-28 | Mission Schools |
| 1901.. | Page 327, lines 21-26 | Report of Osage Agent |
| 1902.. | Pages 39-40 | Mission Schools |
| | Page 294, lines 5-13 | Report of Osage Agent |
| 1903.. | Pages 22-24 | Mission Schools |
| | page 272, lines 10-12 | Report of Osage Agent |
| 1904.. | Pages 46-47 | Mission Schools |
| | Page 300, lines 8-10 | Report of Osage Agent |
| | " 371, lines 6-9 | Report of Superintendent of St. Joseph's School. |

SAMUEL M. BROSIUS,
*For Plaintiffs.*
DANIEL W. BAKER,
STUART McNAMARA,
*For Defendants.*

71 *Memorandum.*

April 19, 1907.—$100,—deposited by Complainant in lieu of appeal bond.

*Complainants' Designation.*

Filed April 20, 1907.

In the Supreme Court of the District of Columbia.

Equity. No. 26271.

QUICK BEAR ET AL., Plaintiffs,
*v.*
LEUPP ET AL., Defendants.

Papers to be included in record for Appeal.
1. The Bill.
2. The Answer.
3. Plaintiffs' exhibits, Nos. 1, 2 and 3.
4. The Decree.
5. The Stipulations, filed April 20, 1907.
6. The Plaintiffs' Appeal, with amendment.
7. The Defendants' note of appeal.

SAMUEL M. BROSIUS,
*Solicitor for Plaintiffs.*

STUART McNAMARA,
*Of Counsel for Def't.*

72 *Defendants' Designation.*

Filed April 20, 1907.

In the Supreme Court of the District of Columbia.

In Equity. No. 26271.

REUBEN QUICK BEAR ET AL., Complainants,
*vs.*
FRANCIS E. LEUPP, Commissioner of Indian Affairs, *et al.*, Defendants.

The Clerk of the Court will please use the designation of the record filed by the complainant herein as the designation of record adopted by defendants on their appeal from so much of the decree of April 15th 1907, as noted herein; the said appeal having been taken under the direction of the Attorney General of the United States and to be treated as an United States case.

DANIEL W. BAKER,
*United States Attorney in and for the District of Columbia, Sol. for Def'ts.*

73 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 72, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copies of which are made part of this record, in cause No. 26271, In Equity, wherein Reuben Quick Bear, *et al.*, are Complainants, and Francis E. Leupp, Commissioner, &c., *et al.*, are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 9th day of May, A. D. 1907.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1786. Reuben Quick Bear *et al.*, appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs *et al.*, and No. 1787, Francis E. Leupp, Commissioner of Indian Affairs, *et al.*, appellants, *vs.* Reuben Quick Bear *et al.* Court of Appeals, District of Columbia. Filed May 9, 1907. Henry W. Hodges, clerk.

TUESDAY, *May 21st, A. D.* 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

The retirement of Ethan Allen Hitchcock and Leslie M. Shaw and the appointment of James Rudolph Garfield and George Bruce Cortelyou as their successors in office having been suggested to the Court, It is upon motion of Mr. Stuart McNamara, of counsel, now here ordered by the Court that the said James Rudolph Garfield, Secretary of the Interior, and the said George Bruce Cortelyou, Secretary of the Treasury, be, and they are hereby, made parties herein in lieu of the said Hitchcock and Shaw retired.

Per MR. CHIEF JUSTICE SHEPARD,
May 21, 1907.

TUESDAY, *May 21st, A. D.* 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

The argument in the above entitled cause was commenced by Mr. C. C. Binney, attorney for the appellants in No. 1786 and for the appellees in No. 1787, and was continued by Messrs. E. H. Gans and Stuart McNamara, attorneys for the appellees in No. 1786 and for the appellants in No. 1787, and was concluded by Mr. C. C. Binney, attorney for the appellants in No. 1786 and for the appellees in No. 1787.

On motion, the appellants in No. 1786 and the appellees in No. 1787 are allowed to file supplemental brief herein if so advised.

In the Court of Appeals of the District of Columbia.

No. 1786.

REUBEN QUICK BEAR ET AL.

*vs.*

FRANCIS E. LEUPP ET AL.

and

No. 1787.

FRANCIS E. LEUPP ET AL.

*vs.*

REUBEN QUICK BEAR ET AL.

*Stipulation.*

It is hereby stipulated by and between the undersigned as counsel for the appellees and appellants respectively in both the above entitled causes that the above entitled causes be and they hereby are sub-

mitted on the records and briefs to the Chief Justice and Justice Wright, the remaining justices who sat in the hearing of these cases, and that the determination in the said causes may be announced and the same shall stand as the opinion of the said Court.

CHARLES C. BINNEY,
*Counsel for Appellant in No.* 1786,
*and for Appellee in No.* 1787.
DANIEL W. BAKER, *U. S. Att'y.*
STUART McNAMARA,
*Ass't U. S. Att'y.*
EDGAR H. GANS,
*Counsel for Appellee in No.* 1786,
*and for Appellant in No.* 1787.

Nov. 18, 1907.

(Endorsed:) Nos. 1786 and 1787. Reuben Quick Bear *et al.*, Appellants, *v.* Francis E. Leupp *et al.* and Francis E. Leupp *et al.*, Appellants, *v.* Reuben Quick Bear *et al.* Stipulation to submit on record and briefs to the Chief Justice and Justice Wright. Court of Appeals, District of Columbia. Filed Nov. 18, 1907. Henry W. Hodges, Clerk.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEU Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

*Opinion.*

Mr. Justice WRIGHT, of the Supreme Court of the District of Columbia, who sat with the court in the hearing of the case in the place of Mr. Justice ROBB, delivered the opinion of the Court:

For many years prior to 1905 the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children. Amongst

these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland.

In June, 1905, this bureau advised the Commissioner of Indian Affairs that it was prepared to care for and to educate Indian pupils during the fiscal year 1906, and requested a renewal of its contract of the preceding year on the same terms and conditions. In March, 1906, 212 members of the Sioux tribe who desired that their children be educated in a Catholic school petitioned the respondents to that end, and particularly that the contract requested by the bureau be entered into on their behalfs; others of the tribe objected and protested; the Commissioner of Indian Affairs made a contract with the Bureau of Catholic Indian Missions for the care, maintenance, and education during the year 1906 of 250 Sioux pupils at St. Francis Mission School on the Rosebud Reservation at the cost of $27,000. The Secretary of the Interior approved the contract, and there were set apart for payment the sums of $24,000 from the "Sioux Treaty Fund," and $3,000 from the income of the "Sioux Trust Fund" the complainants, on behalf of themselves and of all the members of the Sioux tribe, instituted this suit, to enjoin the application of the money to the purpose proposed; the learned justice of the Supreme Court of the District of Columbia, who heard the matter below, was of opinion that an injunction should go against the expenditure of the $24,000 from the "Treaty Fund" and be denied as to the $3,000 from the "Trust Fund," and it was so decreed; both parties have appealed.

The complainants put forward that at the time of the contract the Secretary of the Interior had been deprived by certain legislative expressions (found for the most part in the annual Indian appropriation acts) of all power to make or to authorize a contract for the education of any Indian pupil in any sectarian school; and this is the question.

The necessary outcome of the case will evolve itself from the understanding of the nature and character of the "funds" involved and an analysis of the appropriation acts concerned more readily than it can be made to appear from a discussion of the various arguments put forward by the respective parties.

*Sioux Treaty Fund.*

By the Sioux Treaty of 1868 (15 St., 635) the United States agreed that for a term of twenty years they would provide for every thirty children of the Sioux tribe, a house and a teacher competent to teach the elementary branches of an English education. In 1877 (19 St., 254-5) the United States further agreed to furnish to the Sioux "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868."

By the act of March 2, 1889 (25 St., 894), that article of the treaty of 1868 which provided for schools and for education was continued in force for a second term of twenty years. In pursuance and dis-

charge of the obligations created by this treaty the Indian Appropriation Act of 1905 (33 St., 1048-55) appropriating for the fiscal year 1906 provided amongst other things "For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by act of Congress approved February twenty-eight, eighteen hundred and seventy-seven, seven hundred thousand dollars. ——— ———.

"For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty eight, which article is continued in force for twenty years by section seventeen of the Act of March second eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars."

The fund thus set apart for fulfillment of treaty obligations is the "Sioux Treaty Fund," out of which the $24,000, *supra*, has been set apart. In this connection it is appropriate to observe that of the tribal income applicable to education the proportion for application amongst the 212 petitioners was $33,550.35 (Rec. p. 28), a sum in excess of the $27,000, involved by the contract at bar.

*Sioux Trust Fund.*

In 1889 (25 St., 888-895) in consideration of the relinquishment of the Indian title to lands in Dakota and for other reasons, Congress provided "there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians, &c." This is the "Sioux Trust Fund" out of the income of which the $3,000 *supra*, has been set apart.

With respect to each and to both of these funds, it is to be observed that their creation by Congress has made public money Indian money; in one instance Congress has paid a treaty debt, in the other paid a debt for lands and the like; the money has changed owners; what had been money of the public in the Treasury of the United States is now money of the Indians in the Treasury. So that in its expenditure the Secretary of the Interior is laying out money of the Sioux tribe of Indians, not money to which the public has any longer even the most slender claim of title or proprietorship. This distinction is vital to the case, because if Congress has lain upon the Secretary a limitation or restriction concerning only the purposes to which money of the public may be applied, such a limitation can not readily have application to money of the Indians.

Further, it is to be recognized that the United States, not satisfied that its moral duty of promoting the civilization and education of Indians was fully discharged by according to them the mere benefits to which it was bound and obligated by the Sioux treaty of 1868, at once set out upon a broader and more generous policy; that of ex-

pending, in addition to what the treaty required it to expend, sums for the advancement of Indian education which it was not required by any law or any treaty to expend.

In 1870 (16 St., 335, 359), entirely aside from treaty obligations, was appropriated $100,000 "for the support of industrial and other schools among the Indian tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior." Appropriations of this nature have continued until the present, and contracts have been annually made by the Secretary with mission schools of various denominations, payable out of such gratuitous appropriations; so far as tribes having treaty stipulations were concerned, annual contracts might be and have been paid in part out of "Treaty Funds;" but respecting education for non-treaty tribes, education under annual contracts and all other education must be paid for from the gratuitous appropriations, or not at all; there was no other money.

These gratuitous appropriations are in no wise a disposition of Indian funds for Indian education, but are clear devotions of public money to the cause of Indian education, gratis.

We propose now to point out that in each appropriation act involved in the complainants' position, Congress has not only fulfilled in detail the several treaty obligations relating to education, but also has made a distinct and separate appropriation of the other nature; an appropriation to which it was not obliged; that it need not have made; a gratuitous appropriation of public money to advance the cause of Indian education; and it seems to us that the outcome of the matter will then begin to appear clear.

It is agreed that prior to 1895 the secretary's power to contract with sectarian schools for Indian education existed; but opposition to these contracts having developed, the Indian Appropriation Act of 1894 provided "that the expenditure of money appropriated for school purposes under this act, shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.

"Provided, That the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

The Secretary reported, recommending that contract schools "should be decreased at the rate of not less than twenty per cent. a year."

The Indian Appropriation Act of 1895 (28 St., 888) deals with and provides for many subjects under separate and appropriate headings. Upon page 879 appears the heading "Fulfilling Treaty Stipu-

lations with, and Support of, Indian Tribes," and under that particular heading, amongst other items, is the following:

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the Treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, seventy-five thousand dollars.

Upon page 903, some thirty pages removed from the first, appears the distinct heading, "Support of Schools;" and thereunder is found: "For support of Indian day and industrial schools, and for other educational purposes * * * one million one hundred and sixty-four thousand three hundred and fifty dollars. * * * Provided, that the Secretary of the Interior shall make contracts, but only with present contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools."

In the Indian Appropriation Act of 1896, under the heading "Fulfilling Treaty Stipulations with, and Support of, Indian Tribes" (29 St., 333-4) appear the items, "For subsistence of the Sioux and for purposes of their civilization as per agreement * * * one million dollars," and "For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty * * * twenty-five thousand dollars."

On page 345, again appears the same distinct heading "Support of Schools," and under it "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for * * * one million two hundred and thirty-five thousand dollars. * * * And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

Following on pp. 333-4 are twenty-one distinct items specifically providing for as many non-sectarian schools and one for a sectarian to an aggregate of $920,965.

The Appropriation Act of 1897 (30 St., 66 & 79), presents the two distinct headings as in the act of 1896; under "Fulfilling Treaty Stipulations" appear the items which are necessary to fulfillment including those for schools and education, and under "Support of Schools" appears "For support of Indian day and industrial

schools, and for other educational purposes not hereinafter provided for * * * $1,200,000; * * * and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five * * *"

Thereafter, as in the act of 1896, follow specific provisions for schools to the number of 25, including the one sectarian school, in the aggregate sum of $1,162,771.30. Let it be remembered that all appropriations under the heading "Support of Schools" are the gratuitous, as for convenience, we have before designated them.

The act of 1898 (30 St.) carries, on page 575, the "Fulfilling Treaty Stipulations" heading, together with its items, and on page 587 "Support of Schools" "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,000,000. Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding thirty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

The act of 1899 (30 St.) carries the two headings, the first on page 927, the second on p. 942, as follows:

*"Support of Schools."*

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,100,000. Provided, That the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools."

The act of 1900 (31 St.) at pages 225 and 242, carries the same two distinct headings, the second "Support of Schools," "For support

of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,200,000," followed by the specific appropriations for particular schools, none of which is sectarian.

Such is the legislation upon which the position of the complainants depends. The respondents claim that the restrictions and limitations, being found only in connection with the general item under the heading "Support of Schools," apply only to the gratuitous appropriation carried by that item, and not to items found under the distinct heading "Fulfilling Treaty Stipulations." While we have neither been pointed to, nor have we come upon anything in the books which reaches the particular question, yet all the reasons that seem forceful draw our minds toward the latter contention.

As heretofore pointed out, the appropriations found under the heading "Support of Schools" are the gratuitous appropriations of public money; appropriations primarily devoted to the cause of Indian education. The items under the other heading are obligatory appropriations, primarily devoted to the payment of contractual obligations due the Indians, and only secondarily applied to education by him whom Congress has selected to dispense the trust.

While we of course, recognize the continuing power of Congress to legislate concerning appropriations for Indians, yet in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled by conceiving an instance of the education of a *cestui que trust* through application by the trustee of a trust fund created for that purpose. Once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner. It is not his function to attach limitations or restrictions of his own. If he be so beneficent as to contribute of his own personal funds to the same end, this he may do under any limitations or conditions that please him; but it is not to be said that they attach, also, to the trust fund, nor is it likely for him to intend that they should. Under the existing legislation the position of the United States with respect to the Indian "funds" is practically that of a trustee; with respect to the gratuitous appropriations for "Support of Schools," that of a voluntary donor, so that it may well be that a limitation can attach to the use of the gift money without attaching to the trust money.

This difference in the nature and character of the two funds was sufficient, not only to cause Congress to provide for them separately, although ultimately they were to be expended to the same end, education, but also to entitle them separately, differently, and distinctly. This consideration is significant and its significance must be recognized; it establishes that Congress regarded treaty obligations as distinct from school gratuities. If this be accurate, then it is likely that a restriction attached to the disposition of the gratuity, found only in juxtaposition with the very words creating the gratuity, was intended to apply only to the gratuity.

It is argued by the complainants that the provision "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian

school," found in the acts of 1896 and 1897, is a distinct declaration of a Governmental policy which controls the action of the Secretary as thoroughly as would a direct legislative prohibition. If not impossible, it is at least difficult to accord to this phraseology the effect of a declaration of permanent policy in view of the consideration that the so-called policy announced in one year is reversed the next by directly appropriating for sectarian schools, by expressly authorizing the Secretary to contract with them, and by specifically providing for at least one such, as the succeeding appropriation provides. Although the act of 1896 declares it to be the "settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," yet such appropriations were, nevertheless, made in 1897; and although the act of 1897 declares a policy in identical language with that of 1896, yet the act of 1898 again overrides by declaration by again appropriating for sectarian schools. If the declaration of 1896 was then intended as announcing a permanent policy to control the future, Congress in 1897 in its wisdom saw the necessity of departing from it, and wiped it out by appropriating in that year; and if the declaration of 1897 was currently intended as announcing a permanent policy for the future, it in turn was wiped out by appropriating in 1898; so that as the matter appears these declarations both stand nullified; and there remains nothing declarative of policy save in the act of 1898 the expression, "this being the final appropriation for sectarian schools."

If these acts be all taken together it is perfectly manifest that Congress either intended in each year a permanent policy and deliberately and understandingly postponed it the next; or what is more likely, that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898. And by providing in 1896 in connection with the gratuitous appropriation that the secretary might expend 80 per cent. of the sum spent in 1895, by providing in 1897 in connection with the gratuitous appropriation that he might expend 50 per cent. of that sum, by providing in 1898, in connection with the gratuitous appropriation, that he might expend 40 per cent. In 1898 30 per cent., in 1899 15 per cent., "this being the final appropriation for sectarian schools," thus gradually eliminating in connection with the gratuity what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

But for the sake of the argument, let it be assumed that the language quoted does announce a definite, fixed, and permanent policy, yet what manner of policy is it that is declared? Is it the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money? Or is it the policy of declining to educate an Indian in religious schools gratuitously, at the cost of public donations which are not his and to which he has no claim as matter of right?

Well may it be said that as to national voluntary contributions out of the public funds to the cause of Indian education the taxpayers of the United States, who are adherents to divers creeds and to none,

may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest, and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, nor paid for to this, that, or the other sect as such. But the philanthropy and sense of justice of the same taxpayer is sufficient to enable him ungrudgingly to accord to the Indian the same right and privilege of free choice of schools that he would accord to his neighbor, so long as the money which pays is no longer that of the taxpayer, but gotten to be that of the other.

The first amendment to the Constitution, by the clause "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof," has shackled the hands of legislation against aid or hindrance to creeds and faiths; so be it that they live and flourish, die or wither; they go untouched, unmoved, unstirred by law; against them it speaks not, nor in their favor; in their field each human creature stands unlawed—a sovereign; supreme, to turn which way he will; not only the white and black, but the red man as well; to prohibit an Indian from a particular faith, or from rearing his children in its schools is as far outside the law as in case of a Caucasian; and this is the result if Indian education in a sectarian school of his own choice paid for by his own money is to be prohibited and the right denied. The "Treaty" and "Trust" moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended for their benefit, and in part for their education; it seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost if they desire it; such an intent would be one to "prohibit the free exercise of religion" amongst the Indians, and such would be the effect of the construction for which the complainants contend.

We are, therefore, of the opinion that the so-called declaration of policy, the limitations and restrictions found in the various appropriation acts under the title, "Support of Schools," concern only moneys appropriated under that particular title; that is to say, the gratuitous appropriations of public money to the cause of Indian education, and have nothing to do with the expenditure of the Indian "Treaty Fund," nor with the proceeds of the Indian "Trust Fund."

All parties agree that between the two "Funds" there is no distinction so far as the effort of the complainants' bill is concerned, nor does any distinction occur to us in this regard; the result of the case will, therefore, be the same respecting each. The decree is affirmed in so far as it denied an injunction respecting the income of the Trust Fund; in so far as it enjoined the payment from the "Treaty Fund," it must be reversed, and the cause is remanded with directions to dismiss the bill at the cost of the complainants. And it is so ordered.

FRIDAY, *November 29th*, A. D. 1907.

October Term, 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

Appeals from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, on appeal and cross appeal, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause, be, and the same is hereby, affirmed in so far as it denied an injunction respecting the income of the "Trust Fund;" in so far as it enjoined the payment from the "Treaty Fund" it must be reversed, and the cause remanded with directions to dismiss the bill at the cost of the complainants.

Per MR. JUSTICE WRIGHT,
November 29, 1907.

FRIDAY, *December* 13*th*, A. D. 1907.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

On motion of Mr. E. C. Brandenburg, on behalf of counsel for the appellants in No. 1786, and for the appellees in No. 1787, It is ordered by the Court that said appellants in No. 1786 and said appellees in No. 1787, be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars. And it is further ordered that the mandate in said cause, be and the same is hereby, stayed until further order.

(*Bond on Appeal.*)

Know all men by these presents, That we, Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of ourselves and all other members of the Sioux Tribe of Indians, of the Rosebud Agency, S. D. as principal-, and the American Surety Company of New York, a corporation, organized and existing under the laws of the State of New York, as suret-, are held and firmly bound unto Francis E. Leupp, Commissioner of Indian Affairs Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury, in the full and just sum of Three hundred ($300.00) dollars, to be paid to the said Francis E. Leupp, *et al.*, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixth day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., against Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury, a decree was rendered against the said Reuben Quick Bear, *et al.* and the said Reuben Quick Bear, *et al.* having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Francis E. Leupp, *et al.* citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Reuben Quick Bear, *et al.* shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

AMERICAN SURETY COMPANY OF NEW YORK,
By A. L. ADAMS, [SEAL.]
*Resident Vice-President.*

[Seal of American Surety Company of New York.]

Attest:

L. BERT NYE, [SEAL.]
*Resident Assistant Secretary.*

Sealed and delivered in presence of—

CLAUDE B. BROWN.
W. W. HOPKINS.

Approved by—

SETH SHEPARD,
*Chief Justice Court of Appeals of the District of Columbia.*

[Endorsed:] No. 1786 & 1787. Reuben Quick Bear *et al.*, Appellants, *vs.* Francis E. Leupp, Com'r of Indian Affairs *et al.* and Francis E. Leupp, Com'r of Indian Affairs *et al.*, Appellants, *vs.* Reuben Quick Bear *et al.* Bond on Appeal to the Supreme Court of the United States. Court of Appeals, District of Columbia. Filed Jan. 6, 1908. Henry W. Hodges, Clerk.

MONDAY, *January 6th, A. D.* 1908.

No. 1786.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*,

and

No. 1787.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, *et al.*, Appellants,

*vs.*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on Behalf of Themselves and All Other Members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

On motion of Mr. Stuart McNamara, of counsel for the appellees in No. 1786 and for the appellants in No. 1787, the mandate in the above entitled causes is ordered to issue forthwith.

UNITED STATES OF AMERICA, *ss:*

To Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury, *et al.*, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Reuben Quickbear, Ralph Eagle Feather, and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 7th day of January, in the year of our Lord one thousand nine hundred and eight.

SETH SHEPARD,
*Chief Justice of the Court of Appeals of the District of Columbia.*

Service accepted Jan'y 7, 1908.
DANIEL W. BAKER,
*U. S. Attorney.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 7, 1908. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 63, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury *et al.*, No. 1786, and Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior; George Bruce Cortelyou, Secretary of the Treasury *et al.*, appellants, *vs.* Reuben Quick Bear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux tribe of Indians of the Rosebud Agency, S. D., No. 1787, January Term, 1908, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 13th day of January, A. D. 1908.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 20,972. District of Columbia, court of appeals. Term No. 569. Reuben Quickbear, Ralph Eagle Feather *et al.*, appellants, *vs.* Francis E. Leupp, Commissioner of Indian Affairs; James Rudolph Garfield, Secretary of the Interior, *et al.* Filed January 15th, 1908. File No. 20,972.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.
*Appellants,*

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; ETHAN ALLEN HITCHCOCK, Secretary of the Interior; LESLIE M. SHAW, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury,
*Appellees.*

IN THE

# Supreme Court

OF THE

# United States.

OCTOBER TERM, 1907.

No. 569.

## Motion to Advance Argument, and Hearing of Above Case.

The appellees in the above entitled case respectfully move the Court to advance the argument and hearing of said case, so that the same may be heard at this term of Court.

A brief statement of the case is as follows:

1.

The Government of the United States is in possession of two funds belonging to the Sioux Indians; one is called the "Sioux Trust Fund" and the other the "Sioux Treaty Fund." On March 2, 1889, the Act of Congress of 1889, chapter 465, was approved. This was entitled "An Act to divide a portion of the reservation of the Sioux nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian Tribe to the remainder." Under this Act, the Indians made certain cessions of land, and in partial consideration therefor, it was provided in Section 17 of the Act, as follows:

> "And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act in proportion to the number that shall so receive rations and annuities at the time that this takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments per capita, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."
>
> 25 Stat. at Large, 895.

This is the fund called the "Sioux Trust Fund."

2.

Under a treaty between the United States for different tribes of Sioux Indians, dated April 29th, 1868 (15 Statute at Large, 635), these Indians made large cessions of land, and other rights, and in partial consideration therefor, the United States agreed with them as follows:

> "Article VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be settled on said agricultural reservations, and they, therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years."

By the Act of Congress of February 28, 1877, Chapter 72 (19th Stat. at Large, 254-6), ratifying an agreement with bands of Sioux nation, in consideration of further land cessions, it was provided:

> "In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868."

By the seventeenth section of the Act of 1889, Chapter 405 (25th Stat. at Large, 894), it was provided:

> "that the 7th article of the said treaty of April 29, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the Act shall take effect."

Each year since the ratification of this treaty, there has been appropriated in the Indian Appropriation Act a sum of money to carry out this treaty stipulation, and from the year 1905, the annual appropriation to fulfill this treaty stipulation has been about $225,000. This is the "Sioux Treaty Fund" in dispute.

3.

The Catholic members of the Sioux nations desiring to have their share of these tribal funds applicable to educational purposes, used in their own Catholic schools, brought this matter to the attention of President Roosevelt in 1904 by the Bureau of Catholic Indian Missions, a corporation having charge of the missions among the Catholic Indians throughout the United States, and in 1905, President Roosevelt in an order sent to the Secretary of the Treasury decided that these Indians were entitled, as a matter of moral right, to have the moneys coming to their use in the education of their children in the schools of their choice, care being taken to see that any petition by the Indians was genuine, and that the money appropriated for any given school represented only the *pro rata* proportion to which the Indians making the petition were entitled. The President directed that this should be done, unless Congress should decree to the contrary, or the Courts should decide that the decision of the Department of Justice was erroneous. Accordingly, contracts were made with the Catholic

Indian Bureau for a number of Catholic schools with the Sioux Indians, the conditions prescribed by the President having been complied with, for the fiscal year ending June 30, 1905, amounting in all to $98,460. These contracts were renewed for the fiscal year ending June 30, 1906.

Some question having been raised as to the legality of these contracts, the President, by executive order dated December 23, 1905, addressed to the Commissioner of Indian Affairs, stated that the contracts could still be made as to the trust fund, but that a question had been raised as to the validity of contracts applying the money appropriated to the fulfillment of treaty stipulations, and inasmuch as it was legally uncertain as to whether the treaty funds could be used for these purposes, the President directed that the moneys for the current year should be paid, but that no new contracts were to be entered into for such payments after the close of the fiscal year of June 30, 1906, unless there was authorization by Congress, or some determination by the Courts. Under this order all the $98,460 was paid for the year 1906 except $27,000, which represented the contract with the Bureau of Catholic Indian Missions for the care, education and maintenance of two hundred and fifty Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at one hundred and eight dollars per capita per annum, amounting to twenty-seven thousand dollars.

4.

This was not paid because of the filing of a bill in equity in the Supreme Court of the District of Columbia by the appellants in this case, who alleged that the said contract was illegal and contrary to the Act of June 7, 1897, Section 1, 30th Stat. at Large, 62-79, which contains the following provision:

> "And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school."

The bill asked for an injunction against the appellees to restrain them from paying, or authorizing the payment, of any moneys, either from the Sioux Treaty Fund or the Sioux Trust Fund, to the Bureau of Catholic Indian Missions for the support, education or maintenance of any Indian pupils in the St. Francis Mission School, or any other sectarian school. This bill was filed on the 11th of May, 1906, was duly answered and heard before Justice Ashby M. Gould, of the Supreme Court of the District of Columbia, who on the 15th day of April, 1907, decided that the contracts with reference to and payments from the Sioux Trust Fund were valid, but that the contracts with reference to and payments from the Sioux Treaty Fund were invalid. He, therefore, on that date granted an injunction against the appellees from making any contracts in reference to the Sioux Treaty Fund, or any payments therefrom.

This case was appealed from the decree of Mr. Justice Gould by the present appellees to the Court of Appeals of the District of Columbia on the 19th day of April, 1907, four days after the decree, and a cross-appeal was taken by the present appellants to that part of the decree deciding that payments from the trust fund were legal. A hearing was had before said Court on the 21st day of May, 1907, but the Court did not hand down its decision until November 29, 1907. By this decision of the Court of Appeals of the District of Columbia, they unanimously determined that the contracts were legal as to both funds, and they accordingly ordered that the decision of Justice Gould as to the trust fund be affirmed, and as to the treaty fund, be reversed, and the bill should be dismissed.

Shortly thereafter, the present appellants appealed to the Supreme Court of the United States from this decision of the Court of Appeals of the District of Columbia. The number of the case is 569, and the record is now being printed.

The following are the special and peculiar circumstances upon which the motion to advance is based :

*First.* By the unanimous decision of the Court of Appeals of the District of Columbia, these contracts between the Catholic Indian Bureau and the Commissioner of Indian Affairs, are held to be valid, and the Catholic Indians have a right to have applied to their own schools their proportion of both the trust and treaty funds.

*Secondly.* Although this decision has thus been rendered, the Government of the United States will not pay over the $27,000 due out of the appropriation for the fiscal year ending June 30, 1906, for the reason that the appeal to the Supreme Court of the United States renders the validity of such payments still a matter of doubt.

*Thirdly.* That under the executive order of the President of the United States hereinbefore referred to, no new contracts were to be permitted until the validity of the contracts were determined by the Courts, and the Indian Department is doubtful as to its right to enter into contracts, although the matter has been determined by the Appeal Court of the District of Columbia, because of the pending appeal to the Supreme Court of the United States. In consequence of this executive order, although services were rendered for the fiscal year ending June 30th, 1907, no contracts could be made and the Catholic Indian Bureau has lost nearly $100,000 by its inability to make these contracts for the reasons stated, although the Court of Appeals has decided that the money belongs to the Indians, and ought to be appropriated in accordance with their request.

Fourthly

3.

The question is now pending as to contracts for services that have been continuously rendered, and are now being

rendered in these schools for the fiscal year ending June 30, 1908. The President of the United States has directed the contracts to be made, but the fiscal officers of the Government do not feel justified in paying any money on them, although the services are being rendered, on account of the doubt of the decision of this appeal to the Supreme Court of the United States.

Fifthly

The result, therefore, may be that although the services are still being rendered, and although the Court of Appeals has unanimously determined the contracts valid, and although the bond on appeal could not legally cover the damage occasioned by the delay, these Indians may lose for another year the benefit of the application of their own moneys to the support of their own schools, unless the matter is speedily determined by the Supreme Court of the United States.

Sixthly

The fiscal officers of the government, in addition to these reasons, are very much embarrassed in their accounts and embarrassed by their uncertainty as to what to do in the premises with respect to these contracts, and with respect to payments of money thereunder. Under the decision of the Court of Appeals of the District of Columbia, the contracts are valid, and the money should be paid, but should the Supreme Court of the United States decide to the contrary, any payments now made would be illegal. They, therefore, desire to be relieved of this embarrassment by having the matter decided so that the moneys can be paid or not paid in accordance with the decision of the Supreme Court, a reasonable time before the expiration of the fiscal year ending June 30, 1908. These special circumstances have appealed not only to the officers of the Government of the United States, the present appellees, but also are fully

appreciated by the appellants, and the appellants fully concur in the application for an advancement, as is shown by the letter addressed by their counsel to the special counsel for the Government in these cases, which is printed herewith as a part of the appendix of this motion.

The appellants, therefore, respectfully request the Supreme Court of the United States to advance this case for hearing, so that it may be speedily heard and determined, at this term of Court, at a date sufficiently prior to the termination of the fiscal year ending June 30th, 1908, to enable the appropriate contracts to be made, which will justify the payment of the money out of these private funds.

There has been printed as an appendix to this motion, the decision of the Court of Appeals of the District of Columbia, which contains a full statement of the whole controversy.

Respectfully,

CHARLES J. BONAPARTE,
Attorney-General of the United States.

EDGAR H. GANS,
Special Counsel.

# APPENDIX No. 1.

CHARLES C. BINNEY
Attorney at Law
703 North American Building,
Philadelphia.

Telephones:
Bell—Filbert 36-12.
Keystone—Race 44-92 A.

23 January, 1908.

EDGAR H. GANS, Esq.,
Calvert Building,
Baltimore, Maryland,

My Dear Sir:

In reply to your statement by telephone that you proposed to file a motion in the Supreme Court of the United States to advance the case of Quick Bear et al. vs. Leupp, et al. (October term, 1907, No. 569) on the docket, and to set it down for a hearing during the present term, I desire to say that I cordially concur in such a motion. While the suit directly involves only one contract, its decision must necessarily settle the question of the legality of a number of other similar contracts, so that it is of great importance that such decision be rendered as early as possible. It is unfortunate that in such a case it was necessary to take an intermediate appeal before a hearing in the Court of last resort.

Yours very truly,

CHARLES C. BINNEY,
*Attorney for Reuben Quick Bear et al., Appellants.*

# APPENDIX No. 2.

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Reuben Quickbear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants

*vs.*

Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of the Treasury.

No. 1786.

Francis E. Leupp, Commissioner of Indian Affairs, Ethan Allen Hitchcock, Secretary of the Interior, Leslie M. Shaw, Secretary of the Treasury, Charles H. Treat, Treasurer of the United States and Robert J. Tracewell, Comptroller of Treasury, Appellants

*vs.*

Reuben Quickbear, Ralph Eagle Feather and Charles Tackett, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D.

No. 1787.

APPEAL AND CROSS-APPEAL FROM A DECREE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, ENJOINING THE APPLICATION OF A CERTAIN FUND, AND REFUSING TO ENJOIN THE APPLICATION OF ANOTHER FUND TO A CONTRACT FOR THE EDUCATION OF INDIANS.

For many years prior to 1905, the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children.

Amongst these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland.

In June, 1905, this Bureau advised the Commissioner of Indian Affairs that it was prepared to care for and to educate Indian pupils during the fiscal year 1906, and requested a renewal of its contract of the preceding year on the same terms and conditions; in March, 1906, 212 members of the Sioux tribe who desired that their children be educated in a Catholic School petitioned the respondents to that end, and particularly that the contract requested by the Bureau be entered into on their behalves; others of the tribe objected and protested; the Commissioner of Indian Affairs made a contract with the Bureau of Catholic Indian Missions for the care, maintenance, and education during the year 1906 of 250 Sioux pupils at St. Francis Mission School on the Rosebud Reservation at the cost of $27,000; the Secretary of the Interior approved the contract, and there were set apart for payment the sums of $24,000 from the "Sioux Treaty Fund," and $3,000 from the income of the "Sioux Trust Fund;" the complainants on behalf of themselves and of all the members of the Sioux Tribe instituted this suit, to enjoin the application of the money to the purpose proposed; the learned Justice of the Supreme Court of the District of Columbia, who heard the matter below, was of opinion that an injunction should go against the expenditure of the

$24,000 from the "Treaty Fund" and be denied as to the $3,000 from the "Trust Fund," and it was so decreed; both parties have appealed.

The complainants put forward that at the time of the contract the Secretary of the Interior had been deprived by certain legislative expressions (found for the most part in the annual Indian Appropriation Acts) of all power to make or to authorize a contract for the education of any Indian pupil in any sectarian school; and this is the question.

The necessary outcome of the case will evolve itself from an understanding of the nature and character of the "funds" involved and an analysis of the appropriation acts concerned, more readily than it can be made to appear from a discussion of the various arguments put forward by the respective parties.

*Sioux Treaty Fund.*

By the Sioux Treaty of 1868 (15 St. 635) the United States agreed that for a term of twenty years they would provide for every thirty children of the Sioux tribe, a house and a teacher competent to teach the elementary branches of an English education. In 1877 (19 St. 254–5) the United States further agreed to furnish to the Sioux "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868."

By the Act of March 2, 1889 (25 St. 894) that article of the treaty of 1868 which provided for schools and for education was continued in force for a second term of twenty years. In pursuance and discharge of the obligations created by this treaty, the Indian Appropriation Act of 1905 (33 St. 1084–85) appropriating for the fiscal year 1906 provided amongst other things

> "For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by Act of

Congress, approved February twenty-eight, eighteen hundred and seventy-seven, seven hundred thousand dollars.

* * * * * *

"For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with Article seven of the Treaty of April twenty-ninth, eighteen hundred and sixty-eight, which Article is continued in force for twenty years by Section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars."

The fund thus set apart for fulfillment of treaty obligations is the "Sioux Treaty Fund," out of which the $24,000, *supra*, has been set apart. In this connection it is appproappriate to observe that of the tribal income applicable to education the proportion for application amongst the 212 petitioners was $33,550.35 (Record, page 28), a sum in excess of the $27,000 involved by the contract at bar.

*Sioux Trust Fund.*

In 1889 (25 St. 888-895) in consideration of the relinquishment of the Indian title to lands in Dakota and for other reasons, Congress provided "there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians, etc."

This is the "Sioux Trust Fund" out of the income of which the $3,000, *supra*, has been set apart.

With respect to each and both of these funds, it is to be observed that their creation by Congress has made public money Indian money; in one instance Congress has paid a treaty debt, in the other paid a debt for lands, and the like; the money has changed owners; what had been money of the public in the Treasury of the United States, is now money of the Indians in the Treasury. So that in its expenditure the Secretary of the Treasury is laying out money of the Sioux Tribe of Indians, not money to which the public has any longer even the most slender claim of title or proprietorship. This distinction is vital to the case; because if Congress has lain upon the Secretary a limitation or restriction concerning only the purposes to which money of the public may be applied, such a limitation cannot readily have application to money of the Indians.

Further, it is to be recognized that the United States, not satisfied that its moral duty of promoting the civilization and education of Indians was fully discharged, by according to them the mere benefits to which it was bound and obligated by the Sioux Treaty of 1868, at once set out upon a broader and more generous policy: that of expending in addition to what the treaty required it to expend, sums for the advancement of Indian education which it was not required by any law or any treaty to expend.

In 1870 (16 St. 335, 359) entirely aside from treaty obligations, was appropriated $100,000

> "For the support of Industrial and other schools among the Indian Tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior."

Appropriations of this nature have continued until the present, and contracts have been annually made by the Secretary with mission schools of various denominations, payable out of such gratuitous appropriations; so far as tribes

having treaty stipulations were concerned, annual contracts might be and have been paid in part out of "Treaty Funds;" but respecting education for non-treaty tribes, education under annual contracts and all other education must be paid for from the gratuitous appropriations, or not at all; there was no other money.

These gratuitous appropriations are in no wise a disposition of Indian funds for Indian education, but are clear devotions of public money to the cause of Indian education, gratis.

We propose now to point out that in each appropriation Act involved in the complainant's position, Congress has not only fulfilled in detail the several treaty obligations relating to education, but also has made a distinct and separate appropriation of the other natnre; an appropriation to which it was not obliged; that it need not have made; a gratuitous appropriation of public money to advance the cause of Indian education; and it seems to us that the outcome of the matter will then begin to appear clear.

It is agreed that prior to 1895 the Secretary's power to contract with sectarian schools for Indian education existed; but opposition to these contracts having developed, the Indian appropriation Act of 1894, provided:

> "That the expenditure of money appropriated for school purposes under this act, shall be at all times under the supervision and direction of the Commissioner of Indian Affairs and in all respects in conformity with such conditions, rules and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.
>
> "Provided, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the

education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

The Secretary reported, recommending that contract schools "should be decreased at the rate of not less than twenty per cent. a year."

The Indian appropriation Act of 1895 (28 St. 888) deals with and provides for many subjects, under separate and appropriate headings. Upon page 879 appears the heading,

FULFILLING TREATY STIPULATIONS WITH, AND SUPPORT OF, INDIAN TRIBES,

and under that particular heading, amongst other items, is the following:

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, seventy-five thousand dollars."

Upon page 903, some thirty pages removed from the first, appears the distinct heading

"SUPPORT OF SCHOOLS"

and thereunder is found,

"For support of Indian day and industrial schools, and for other educational purposes, ——— one million one hundred and sixty-four thousand three hundred and fifty dollars, ———; *provided*, that the Secretary of the Interior shall make contracts, but only with present

contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools."

In the Indian Appropriation Act of 1896, under the heading "Fulfilling Treaty Stipulations with, and Support of, Indian Tribes" (29 St. 333-34) appear the items—

"For subsistence of the Sioux and for purposes of their civilization as per agreement—one million dollars," and

"For support and maintenance of day and industrial schools, including purchase, erection, and repairs of school buildings, in accordance with article seven of the treaty—twenty-five thousand dollars."

On page 345 agains appears the same distinct heading "Support of Schools," and under it—

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for—one million two hundred and thirty-five thousand dollars—And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school;

"Provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools cannot be provided

for such Indian children and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eigteen hundred and ninety-five."

Following on pp. 333–4 are twenty-one distinct items specifically providing for as many non-secterian schools and one for a sectarian to an aggregate of $920,965.

The Appropriation Act of 1897 (30 St. 66, 79) presents the two distinct headings as in the Act of 1896; under "Fulfilling Treaty Stipulations" appear the items which are necessary to fulfillment including those for schools and education, and under "Support of Schools" appears—

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, * * * $1,200,000 * * * and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school; provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five * * *."

Thereafter, as in the Act of 1896, follow separate provisions for schools to the number of 25, including the one sectarian school, in the aggregate sum of $1,162,771.30. Let it be rembered that all appropriations under the heading "Support of Schools" are the gratuitous, as for convenience, we have before designated them.

The Act of 1898 (30 St.) carries, on page 575, the "Fulfilling Treaty Stipulations" heading, together with its items, and on page 587, "Support of Scools":

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for—$1,000,000. Provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding thirty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five."

The appropriations for school buildings and for the support of particular schools were substantially the same as in the Act of 1896.

The Act of 1899 (30 St.) carries the two headings, the first on page 927, the second on page 942, as follows:

"SUPPORT OF SCHOOLS."

> "For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,100,000, provided that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract

schools, this being the final appropriation for sectarian schools."

The Act of 1900 (31 St.), at pages 225 and 242, carries the same two distinct headings, the second

"SUPPORT OF SCHOOLS."

"For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, $1,200,000,"

followed by the specific appropriations for particular schools, none of which is sectarian.

Such is the legislation upon which the position of the complainants depends. The respondents claim that the restrictions and limitations being found only in connection with the general item under the heading "Support of Schools," apply only to the gratuitous appropriation carried by that item, and not to items found under the distinct heading "Fulfilling Treaty Stipulations." While we have neither been pointed to, nor have we come upon anything in the books which reaches the particular question, yet all the reasons that seem forceful, draw our minds toward the latter contention.

As heretofore pointed out, the appropriations found under the heading "Support of Schools" are the gratuitous appropriations of public money; appropriations primarily devoted to the cause of Indian education; the items under the other heading are obligatory appropriations, primarily devoted to the payment of contractual obligations due the Indians, and only secondarily applied to education by him whom Congress has selected to dispense her trust.

While we, of course, recognize the continuing power of Congress to legislate concerning appropriations for Indians, yet in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled

by conceiving an instance of the education of a cestui que trust through application by the trustee of a trust fund created for that purpose; once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner; it is not his function to attach limitations or restrictions of his own; if he be so beneficent as to contribute of his own personal funds to the same end, this he may do under any limitations or conditions that please him; but it is not to be said that they attach also to the trust fund, nor is it likely for him to intend that they should; under the existing legislation the position of the United States with respect to the Indian "Funds" is practically that of a trustee; with respect to the gratuitous appropriations for "Support of Schools," that of a voluntary donor; so that it may be that a limitation can attach to the use of the gift money without attaching to the trust money.

This difference in the nature and character of the two funds was sufficient, not only to cause Congress to provide for them separately, although ultimately they were to be expended to the same end, education, but also to entitle them separately, differently, and distinctly; this consideration is significant and its significance must be recognized; it established that Congress regarded treaty obligations as distinct from school gratuities; if this be accurate, then it is likely that a restriction attached to the disposition of the gratuity, found only in juxtaposition with the very words creating the gratuity, was intended to apply only to the gratuity.

It is argued by the complainants that the provision

> "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,"

found in the Acts of 1896 and 1897, is a distinct declaration of a Governmental policy which controls the action of the Secretary as thoroughly as would a direct legislative prohibition. If not impossible, it is at least difficult to accord

to this phraseology the effect of a declaration of permanent policy in view of the consideration that the so-called policy announced in one year is reversed the next, by directly appropriating for sectarian schools by expressly authorizing the Secretary to contract with them, and by specifically providing for at least one such, as the succeeding appropriation provides. Although the Act of 1896 declares it to be the "settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," yet such appropriations were, nevertheless, made in 1897; and although the Act of 1897 declares a policy in identical language with that of 1896, yet the Act of 1898 again overrides by declaration by again appropriating for sectarian schools. If the declaration of 1896 was then intended as announcing a permanent policy to control the future, Congress in 1897 in its wisdom saw the necessity of departing from it, and wiped it out by appropriating in that year; and if the declaration of 1897 was currently intended as announcing a permanent policy for the future, it in turn was wiped out by appropriations in 1898; so that as the matter appears these declarations both stand nullified; and there remains nothing declarative of policy save in the Act of 1898 the expression, "this being the final appropriation for sectarian schools."

If these acts be all taken together it is perfectly manifest that Congress either intended in each year a permanent policy and deliberately and understandingly postponed it to the next, or what is more likely, that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898. And by providing in 1896 in connection with the gratuitous appropriation that the Secretary might expend eighty per cent. of the sum spent in 1895, by providing in 1897 in connection with the gratuitous appropriation that he might expend fifty per cent. of that sum by providing in 1898, in connection with the

gratuitous appropriation, that he might expend forty per cent., in 1898 thirty per cent., in 1899 fifteen per cent., "this being the final appropriation for sectarian schools," thus gradually eliminating in connection with the gratuity what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

But for the sake of the argument, let it be assumed that the language quoted does announce a definite, fixed and permanent policy; yet what manner of policy is it that is declared? Is it the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect, at the cost of his own money? Or is it the policy of declining to educate an Indian in religious schools gratuitously, at the cost of public donations, which are not his, and to which he has no claim as matter of right?

Well may it be said that as to national voluntary contributions out of the public funds to the cause of Indian education, the taxpayers of the United States, who are adherents to divers creeds and to none, may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strenghtening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest; and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, or paid for to this, that or the other sect, as such. But the philanthropy and sense of justice of the same taxpayer is sufficient to enable him ungrudgingly to accord to the Indian the same right and privilege of free choice of schools that he would accord to his neighbor, so long as the money which pays is no longer that of the taxpayer, but gotten to be that of the other.

The first amendment to the Constitution, by the clause, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," has shackled the hands of legislation against aid or hindrance to creeds and faiths; so be it that they live and flourish, die or wither; they go untouched, unmoved, unstirred by law; against them it speaks not, nor in their favor; in their field each human creature stands unlawed—a sovereign, supreme—to turn which way he will; not only the white and black, but the red man as well; to prohibit an Indian from a particular faith, or from rearing his children in its school is as far outside the law as in the case of a Caucasion; and this is the result if Indian education in a sectarian school of his own choice paid for by his own money is to be prohibited and the right denied.

The "Treaty" and "Trust" moneys are the only moneys that the Indians can lay claim to as a matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended for their benefit and in part for their education. It seems inconceivable that Congress shall have intended to prohibit them from receiving religious education at their own cost, if they desire it. Such an intent would be one to "prohibit the free exercise of religion" amongst the Indians, and such would be the effect of the construction for which the complainants contend.

We are therefore of the opinion that the so-called declaration of policy, the limitations and restrictions found in the various appropriation Acts under the title "Support of Schools," concern only moneys appropriated under that particular title; that is to say, the gratuitous appropriations of public money to the cause of Indian education, and have nothing to do with the expenditure of the Indian "Treaty Fund," nor with the proceeds of the Indian "Trust Fund."

All parties agree that between the two "Funds" there is no distinction so far as the effort of the complainants' bill is concerned, nor does any distinction occur to us in this regard; the result of the case will therefore be the same respecting each. The decree is affirmed in so far as it denied an injunction respecting the income of the Trust Fund; in so far as it enjoined the payment from the "Treaty Fund," it must be reversed, and the cause is remanded with directions to dismiss the bill at the cost of the complainants, and it is so ordered.

Office Supreme Court, U. S.
FILED.
FEB 19 1907
JAMES H. McKENNEY,
Clerk.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

vs.

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## APPELLANTS' BRIEF.

CHARLES C. BURLEY,
Solicitor for Appellants.

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Of Counsel.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., *Appellants*,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States, and ROBERT J. TRACEWELL, Comptroller of the Treasury.

**APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.**

## APPELLANTS' BRIEF.

### STATEMENT OF THE CASE.

This is an appeal from a decree of the Court of Appeals of the District of Columbia affirming in part and reversing in part a decree of the Supreme Court of the District of Columbia, in equity, on an injunction bill filed by three members of the

Sioux tribe of Indians of the Rosebud Reservation, South Dakota, against the Commissioner of Indian Affairs and other officers of the Government, to prevent the use of Indian treaty and trust funds in payment under a contract for the education of Indian pupils in a sectarian school. The decree of the Court of Appeals affirmed that of the lower court in so far as it denied an injunction respecting the income of the "Trust Fund," but reversed that decree in so far as it enjoined the payment from the "Treaty Fund," and it directed the bill to be dismissed at the cost of the complainants, who are the present appellants.

The facts are as follows:—

By the treaty of peace of April 29, 1868, art. 7 (15 Stats., 635), between the United States and the different tribes of Sioux Indians, a certain tract of country was set apart for the Sioux Indians, and they relinquished all claims to land outside the limits of that tract. In the same treaty the United States agreed to do various things, and to provide, for twenty years, for every thirty children of the Sioux tribe, a teacher competent to teach the elementary branches of an English education, to reside among the Indians. By the act of February 28, 1877, chap. 72 (19 Stats. 254–5), the United States further agreed to furnish to the said Indians "schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868." By the act of March 2, 1889, chap. 405, sec. 17 (25 Stats. 894), article 7 of the treaty of 1868 was continued in force for twenty years longer "subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education."

The Indian appropriation act of March 3, 1905, chap. 1479, sec. 1 (33 Stats. 1048, 1055), made the following appropriation for the fiscal year 1906:

> For subsistence of the Sioux, and for purposes of their civilization, as per agreement ratified by Act of Congress approved February twenty-eighth, eighteen hundred and

seventy-seven, seven hundred thousand dollars: PROVIDED, That this sum shall include transportation of supplies from the termination of railroad or steamboat transportation, and in this service Indians shall be employed whenever practicable: AND PROVIDED FURTHER, That the number of rations issued shall not exceed the number of Indians on each reservation, and any excess in the number of rations issued shall be disallowed in the settlement of the agent's account: PROVIDED FURTHER, That the unexpended balance for the fiscal year nineteen hundred and five is hereby appropriated and made available for nineteen hundred and six;

For support and maintenance of day and industrial schools, including erection and repairs of school buildings, in accordance with article seven of the treaty of April twenty-ninth, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the Act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars.

This fund is known as the Sioux treaty fund, and the share of the Rosebud Sioux therein is:

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|---|---|
| Subsistence and civilization | $168,277.50 |
| Education, Sioux nation | 54,098.10 |
| | $222,375.60 (Rec. 32) |

By the said act of March 2, 1889, sec. 17 (25 Stats. 858, 895), certain reservations were located within the tract of country which had been set apart for the Sioux in 1868, and the act provided for the relinquishment, by the Sioux, of all land outside these reservations. As a part of this arrangement, it was provided that the sum of $3,000,000 should be deposited in the Treasury to the credit of the Sioux tribe as a permanent fund—

> the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time that this act takes effect, as follows: one-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.

This fund is known as the Sioux trust fund, and the payment of the interest is regulated by the act of April 1, 1880, chap. 41, sec. 1 (21 Stats. 70), providing as follows:

> And the United States shall pay interest semi-annually from the date of the deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.

The share of the Rosebud Sioux in the income of this trust fund, available for education, is $17,245.48 per annum. (Rec. 32.)

Sectarian schools for the Indians have existed since early in the last century, and were from time to time aided by the Government, though without any formal contract. About 1870 the Interior Department began to contract with such schools, the payment being made partly out of money appropriated by Congress for the support of Indian schools and

partly out of Indian treaty funds (*i. e.*, money annually appropriated by Congress in fulfilment of treaties) and the income of Indian funds held in trust by the Government. (Rec. 14.) In 1894 Congress directed the Secretary of the Interior to "investigate the propriety of discontinuing contract schools" and submit his conclusions, with an estimate of the annual cost "of substituting government schools for contract schools." (Act of Aug. 15, 1894, chap. 290; 28 Stats. 311.) The Secretary ultimately suggested that the contract schools "should be decreased at the rate of not less than twenty per cent. a year," so that in a few years they should cease to exist, the Bureau preparing in the mean time to do without them, and they gathering strength to continue without Government aid. (Ho. Ex. Doc. No. 107, 53d Cong., 3d Sess.; Rec. 15.) The Indian appropriation acts for the fiscal years 1896 and 1897 declared it to be "the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school," but both these and the preceding and two following similar acts provided that the Secretary of the Interior might make contracts with contract schools, under certain conditions, and only to an amount not exceeding certain annually diminishing percentages (80, 50, 40, 30, and 15 per cent. respectively) of the amount so used for the fiscal year 1895. The appropriation for the fiscal year 1900 was accompanied by the statement, "this being the final appropriation for sectarian schools." (28 Stats. 903; 29 Stats. 345; 30 Stats. 79, 567, 962.)

The St. Francis Boarding School, on the Rosebud Reservation, South Dakota, a sectarian school, had for some time previously been one of the contract schools, and in the fiscal years 1895 to 1900 inclusive the contract was paid for out of the appropriation for the Sioux treaty fund. (Rec. 34–39.) No contract was made with it for the fiscal years 1901 to 1904 inclusive, and in the Indian Commissioner's reports for those years it is referred to as a mission school supported by the

Roman Catholic Church. (Appx.,* p. 86, 92, 98, 103.) A contract was made with it for the fiscal year 1905 (Rec. 42), and in May, 1906, the Commissioner of Indian Affairs, acting in behalf of the United States, again contracted with the Bureau of Catholic Indian Missions, a corporation of the State of Maryland, as of July 1, 1905, for the care, education and maintenance, during the fiscal year 1906, of 250 Indian pupils of the Sioux tribe at this sectarian school, at a total cost of $27,000, to be paid out of the Sioux treaty fund and the income of the Sioux trust fund. The Secretary of the Interior approved this contract, and the sum of $24,000 was set apart from the Sioux treaty fund, and $3,000 from the income of the Sioux trust fund, for this purpose, but the President of the United States directed that no payments should be made under it, in order that the validity of the contract might be determined by the courts. (Rec. 12-13, 49.)

This contract was made in accordance with the request of 212 of the Rosebud Sioux, representing 669 shares out of a total of 4,986 Indians on the rolls of the Rosebud Reservation, but a large number of Indians protested against such use of the treaty and trust funds. (Rec. 28, 13.)

On May 11, 1906, the appellants, who had always protested against such use of the treaty and trust funds, filed this bill, in behalf of themselves and all other members of the Sioux tribe of the Rosebud Reservation, praying for a perpetual injunction to restrain the Commissioner of Indian Affairs from making the contract in question, and from carrying it into effect if made, to restrain the Secretary of the Interior from approving the said contract or authorizing the payment of any money thereunder, and to restrain the Secretary of the Treasury, the Treasurer of the United States and the

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* For the convenience of the Court, those portions of the Indian Commissioner's reports which have been used as evidence, under the stipulation of April 19, 1907 (Rec. 49–50), have been printed as an appendix to this brief. This appendix is referred to in the argument as "Appx."

Comptroller of the Treasury from participating in any way in the payment of any money under the said contract.

On April 15, 1907, the Supreme Court of the District of Columbia entered a decree that an injunction should issue as prayed, in so far as concerned the Sioux treaty fund, but not as regards the income of the Sioux trust fund, and that each side should pay its own costs. On April 15, 1907, the present appellants appealed from so much of this decree as refused an injunction as regards the income of the Sioux trust fund, and also from so much of the decree as imposed upon them any part of the costs. The present appellees also took a cross-appeal. (Rec. 47–49.)

The appeals were heard by the Court of Appeals of the District of Columbia on May 21, 1907, Mr. Justice Wright, of the Supreme Court of the District, sitting in place of Mr. Justice Robb. Before the decision was announced Mr. Justice McComas died, and subsequently the cases were submitted by stipulation to the Chief Justice and Mr. Justice Wright. On November 29, 1907, the Court of Appeals affirmed the decree of the Supreme Court of the District of Columbia in so far as it denied an injunction respecting the income of the trust fund, but reversed that decree in so far as it enjoined the payment from the treaty fund, and remanded the case with directions to dismiss the bill at the cost of the complainants. Whereupon this appeal was taken.

## ASSIGNMENTS OF ERROR.

The Court of Appeals of the District of Columbia erred:

1. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had legal authority to contract, in behalf of the United States, for the education of Indian pupils in a sectarian school.

2. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had authority to apply any of the money of the Sioux treaty fund in payment under a con-

tract for the education of Indian pupils at a sectarian school.

3. In holding that the Secretary of the Interior and the Commissioner of Indian Affairs had legal authority to apply any of the money of the income of the Sioux trust fund in payment under a contract for the education of Indian pupils at a sectarian school.

4. In reversing the decree of the Supreme Court of the District of Columbia in so far as it enjoined the payment from the Sioux treaty fund.

5. In affirming the decree of the Supreme Court of the District of Columbia in so far as it denied an injunction respecting the income of the Sioux trust fund.

## BRIEF OF ARGUMENT.

The issue in this case concerns the legality of a contract made by the Commissioner of Indian Affairs, on behalf of the United States, and approved by the Secretary of the Interior, for the education of certain Indian pupils in a sectarian school, the money to be paid from the Sioux treaty fund and from the income of the Sioux trust fund. The following propositions cover the ground of the appellants' argument:—

1. The term "contract schools," used in the Indian Appropriation Act for the fiscal year 1895, directing an investigation, and in the similar acts for the years 1896–1900 inclusive, imposing gradually increasing limitations upon the Secretary of the Interior's power to contract, included the schools for which the contracts were then payable out of Indian treaty and trust funds.

2. After the close of the fiscal year 1900 the Secretary of the Interior could not legally make or authorize any contract, in behalf of the United States, for the education of Indian pupils in any sectarian school.

3. The Secretary's power to make such a contract was taken away altogether, and not merely as regards contracts

where the money was to be paid out of appropriations made by Congress expressly for the support of Indian schools.

4. As regards the taking away of the Secretary's power to make such a contract, no distinction can be drawn between money expressly appropriated by Congress for the support of Indian schools and money appropriated by Congress in fulfillment of Indian treaties and available for education.

5. Nor can any distinction be drawn in this respect between money expressly appropriated by Congress for the support of Indian schools and money paid by the Government as interest on Indian funds held in trust by the Government.

These propositions will be considered in their order:

(1)

THE TERM "CONTRACT SCHOOLS," USED IN THE INDIAN APPROPRIATION ACT FOR THE FISCAL YEAR 1895, DIRECTING AN INVESTIGATION, AND IN THE SIMILAR ACTS FOR THE YEARS 1896–1900 INCLUSIVE, IMPOSING GRADUALLY INCREASING LIMITATIONS UPON THE SECRETARY OF THE INTERIOR'S POWER TO CONTRACT, INCLUDED THE SCHOOLS FOR WHICH THE CONTRACTS WERE THEN PAYABLE OUT OF INDIAN TREATY AND TRUST FUNDS.

As the appellants found their case upon certain legislation enacted by Congress in regard to contract schools it is necessary to understand clearly what that term "contract schools" meant, before proceeding to consider the effect of the legislation.

The Indian Appropriation Act of August 15, 1894, Chap. 290 (28 Stats. 311), directed the Secretary of the Interior "to inquire into and investigate the propriety of discontinuing contract schools" and to submit "an estimate of the annual cost, if any, of substituting Government schools for contract schools." The Secretary reported in regard to contract schools, suggesting "that they should be decreased at the rate of not less than 20 per cent. a year." (Ho. Ex. Doc. No. 107, 53d Cong., 3d Sess.; Rec. 15.) The appropriation

acts for the next five years (28 Stats., 903; 29 Stats., 345; 30 Stats., 79; 30 Stats., 567; 30 Stats., 942) authorized the Secretary of the Interior to "make contracts with contract schools" to a limited extent, the amount of such contracts being fixed at a gradually decreasing percentage of the amount so used for the fiscal year 1895, which five successive reductions were obviously intended to carry out the Secretary of the Interior's suggestion. Neither the appropriation acts nor the Secretary's report of his investigation defined the term "contract schools," apparently because there could be no doubt as to its meaning. It simply meant *the schools with which the Interior Department entered into contracts for the education of Indian pupils.*

This would seem self-evident, the natural meaning of the words excluding any other idea; but there is also positive evidence that although the money required for these contracts was taken mainly from the annual appropriation for the support of Indian schools, the term "contract schools" was not restricted to the schools supported out of those appropriations. The record (pp. 34–39) contains official statements of the sectarian schools supported from Indian treaty and trust funds in the fiscal years 1895 to 1900 inclusive, and the Indian Commissioner's reports for those years (Appx., 55–82) show that nearly all the schools mentioned in these statements were officially reported as "contract schools" in each year respectively. Thus the statement for 1895 (Rec. 34; see question 6, Rec. 32) shows five sectarian schools supported from Indian treaty and trust funds, all of which appear in the list of contract schools in the Indian Commissioner's report for 1894. (Appx., 52,53.) Not all of these schools appear under precisely the same name in both lists, but the discrepancies are explained on page 46 of the record, so that the identity of the schools is shown beyond a doubt. They are the schools at the Osage Agency, Pine Ridge Agency, Rosebud Agency and Sac and Fox Agency, and they are mentioned as "contract schools" for both the fiscal years 1894 and 1895.

The Indian Commissioner's report for 1895 (Appx., 59) mentions all five of these schools as among the contract schools for that year, but it excludes one of them (Sacred Heart Boarding School at the Sac and Fox Agency, called St. Mary's Academy, Sacred Heart, Okla., in the statements on pages 34–39 of the record) from the list of contracts for 1896. This latter school, as well as another at the same place, were supported from an Indian treaty fund in 1896 (Rec. 35) but apparently without a formal contract.

Comparing the Indian Commissioner's report for 1896 (Appx., 62–64) with page 36 of the record, the schools at the Osage, Pine Ridge, and Rosebud Agencies, supported by Indian treaty and trust funds, are again named among the contract schools for 1897, besides the similarly supported Grace Mission and Immaculate Conception Schools at Crow Creek agency.

In the Indian Commissioner's report for 1897 (Appx., 70) the schools at Pine Ridge and Rosebud (supported from Indian treaty and trust funds, see Rec. 37) appear as contract schools for 1898, but while two Osage schools are referred to, they do not appear in the list of contract schools for 1898, although they were actually supported from treaty and trust funds in that year (Rec. 37), the contracts in regard to them being regarded as in some way different from those with other schools. This was inconsistent with the earlier practice, as well as with that observed in the case of the schools at Pine Ridge and Rosebud, which were always kept in the lists of contract schools.

Comparing the statement for 1898–9 (Rec. 38) with the Indian Commissioner's report for 1898 (Appx., 73), and also comparing the statement for 1899–1900 (Rec. 39) with the Indian Commissioner's reports for 1899 and 1900 (Appx., 76–77, 79) the same facts appear. The Holy Rosary Boarding School at Pine Ridge and the St. Francis Boarding School at Rosebud, were supported from Indian treaty and trust funds (Rec. 38, 39), and were again recognized as contract schools. The same is true of the Kate Drexel Boarding School on the Uma-

tilla Reservation, supported from an Indian trust fund in 1900. (Rec. 39.)

The fact that schools supported from Indian treaty and trust funds were named in the lists of contract schools reported to Congress, in each of the six years during which Congress was gradually changing its policy in regard to contract schools, abundantly proves that when Congress used the term "contract schools" in the statutes above referred to, it understood that term as including all schools with which contracts were made for the education of Indian pupils. Moreover, it must not be supposed that this was a new use of the term "contract schools." It is true that before Congress began to change its policy towards these schools the Indian Commissioner's reports were less specific, and treated Indian education more generally, without distinguishing between contract schools and others, but in the case of tribes having funds available for education, under treaty stipulations, contracts were made with sectarian schools payable out of such funds, and this had been the practice from the first, as the appellees' answer in this case clearly admits. (Rec. 14.) There can be no doubt, therefore, that when Congress in 1894 directed the Secretary of the Interior "to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools," and when the Secretary reported, suggesting a plan for gradually doing away with the contract schools, making no distinctions among them, both Congress and the Secretary were referring to the contract schools in general, and not merely to those of them which were supported from the appropriations expressly made by Congress for Indian education, to the exclusion of the contract schools supported from Indian treaty and trust funds.

It is true that the new Indian Commissioner, who took

office in 1897, differed slightly from his predecessor in his view of the contracts made for the two schools on the Osage Reservation as well as for a school for the Pottawatomies, excluding the amounts paid to these schools in 1895 from the computation of the total amount used for contract schools in that year, and also regarding the contracts with these schools as outside of the limits imposed by Congress upon his power to contract. While this peculiar view was at variance both with the earlier practice of the Bureau and with the practice of the same Commissioner in regard to other similar schools, it seems either to have escaped the notice of Congress or to have been thought too unimportant to call for positive action. In fact it was more a matter of bookkeeping than anything else, since its effect was to reduce the amount computed as used for contract schools in 1895, and hence to reduce the percentages available for such schools in 1897 and subsequently, which diminution of the Secretary's power to contract counterbalanced to some extent his additional exercise of that power in regard to the Osage and Pottawatomie schools. During the years 1897–1900 inclusive the Commissioner still had undoubted authority to make contracts with sectarian schools to a certain extent, and the mere fact that he adopted a view which slightly increased his authority, beyond that claimed by his predecessor, furnishes no ground for assuming that when Congress made "the final appropriation for sectarian schools" in 1899 (30 Stats. 942), and permitted the Secretary of the Interior to make contracts with contract schools for the fiscal year 1900, to an amount not exceeding 15 per cent. of the amount so used for the fiscal year 1895, it used the term "contract schools" in any limited sense, not including contract schools supported from Indian treaty and trust funds.

(2)

AFTER THE CLOSE OF THE FISCAL YEAR 1900 THE SECRETARY OF THE INTERIOR COULD NOT LEGALLY MAKE OR

AUTHORIZE ANY CONTRACT, IN BEHALF OF THE UNITED STATES, FOR THE EDUCATION OF INDIAN PUPILS IN ANY SECTARIAN SCHOOL.

The opinion of the Court of Appeals begins with a serious error in a statement of fact, which misstatement indicates that that court has failed to grasp the bearing of some of the important facts of the case. Mr. Justice Wright says:

> For many years prior to 1905 the Government of the United States had made, with mission schools of various denominations, annual contracts for the education of Indian children. Amongst these was a sectarian school maintained on the Rosebud Reservation by the Bureau of Catholic Indian Missions, a corporation of the State of Maryland. (Rec. 54.)

The contracts referred to were made for the years prior to 1901, while for 1901 to 1904 inclusive none were made, except as to two Roman Catholic schools for the Osages and (for 1904 only) a Roman Catholic school for the Menomonees, which were treated as peculiar exceptions, as the Indian Commissioner's reports clearly show. During those four years the St. Francis School on the Rosebud Reservation, with which this case is concerned, was a mission school, wholly supported by the Roman Catholic Church. (Appx., pp. 86, 92, 98, 103.) The contract now under consideration was not, as the court below intimates, such as had been made annually for many years, but, on the contrary, no such contract was made for the four years immediately following the fiscal year 1900, for which, to quote the statute (30 Stats. 942), "the final appropriation for sectarian schools" was made. The full significance of this fact will appear later, but the misstatement of the Court of Appeals in regard to it deserves to be briefly noticed at the outset, because it is certain that after the fiscal year 1900 no contract was made with any sectarian school maintained on the Rosebud Reservation until 1905,

although an annual contract had been made with such school for a number of years down to 1900. Inasmuch as whatever restriction Congress imposed upon the Secretary of the Interior's power to contract with sectarian schools became most completely effective at the close of the fiscal year 1900, the absence of any contract with the sectarian school on the Rosebud Reservation until four years thereafter is a fact of some significance, as indicating a belief that the restriction had become a total prohibition, and the mistake of the Court of Appeals in overlooking this fact seems to have had some influence upon its decision.

The appellants submit that, even without regard to this mistake, the Court of Appeals has reached its conclusion by an erroneous course of reasoning. In the first place, it has looked at the whole matter exclusively from the standpoint of what it considered the rights of the Indians in Indian treaty and trust funds, not from the standpoint of the proper attitude of the Government towards sectarian bodies; and secondly, it has treated these funds as if they were the property of the individual Indians, which each individual was entitled to control the disposition of, to the extent of his pro rata share. These points will be considered below, but in considering the intention of Congress it should be borne in mind from the start that the proper attitude of the Government towards sectarian bodies is vastly more important than the more or less beneficial use of any particular fund; for the former concerns every citizen, and will do so as long as a government exists in this country, while the latter concerns only the particular beneficiaries of the fund, and only during the period of the existence of the fund. It is only fair to assume, therefore, that Congress, when legislating with regard to the power of the Secretary of the Interior to make contracts with sectarian schools, had in mind the more important matter as well as the less important, and that it gave, as was only proper, greater weight to the former than to the latter; or at least that it did not wholly overlook the former, as the Court of Appeals seems to have done.

In order to understand the intention of Congress in the statutes imposing limitations upon the Secretary of the Interior's power to contract with sectarian schools, it is necessary to know something of the history of those schools, and their status, at the time these limitations began to be imposed. As the appellees' answer states, from early in the last century sectarian schools for the Indians were aided by the Government without any formal contract; and about 1870 the Interior Department began to contract with such schools, the payments under such contracts being made partly out of money appropriated by Congress for the support of Indian schools, and partly out of tribal funds provided for by treaty and applicable to educational purposes. In 1876 Congress adopted the policy of making appropriations annually for Indian education, and from these funds, as well as from certain tribal funds, were paid the amounts due under contracts made by the Commissioner of Indian Affairs with sectarian schools for the education of Indian pupils. (Rec. 14.)

Referring to the statutes, it appears that the act of July 15, 1870, chap. 296 (16 Stats. 335, 359), appropriated $100,000 "For the support of industrial and other schools among the Indian tribes not otherwise provided for, to be expended under the direction of the Secretary of the Interior"; and the act of March 3, 1881, chap. 137 (21 Stats. 485, 501), appropriated $85,000 "For support of industrial schools and for other education among the Indian tribes." In 1882 $50,000 were appropriated for the same purpose, similarly described. The act of March 1, 1883, chap. 61 (22 Stats. 433, 438), appropriated $400,000 "For support of Indian day and industrial schools and for other educational purposes not hereinafter provided for," and the same language has been invariably used in every year down to the present time, except that the act of July 4, 1884, chap. 180 (23 Stats. 76, 91), added the words "and in pursuance of treaty obligations," this lumping of appropriations being confined to that particular year. The same act of 1884 distinguished the appropria-

tions made expressly for Indian education (which had previously been classed with some other items of appropriations under the heading "Miscellaneous") by the heading "Support of Schools," which heading has been retained ever since.

The defendants' answer (p. 14) admits the undoubted fact that all these appropriations had been used for the payment of money due sectarian schools under contracts as well as for the support of Government schools, and it therefore follows that the words, "Support of Schools.—For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for," were well understood to include contract schools as well as Government schools. It is therefore clear that before 1895 the Secretary's power to contract for Indian education in sectarian schools was only limited by the funds at his disposal; but opposition to these contracts having developed, the Indian appropriation act of 1894 provided that the Secretary of the Interior should "investigate the propriety of discontinuing contract schools . . . and . . . submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting government schools for contract schools, together with such recommendations as he may deem proper." Accordingly the Secretary suggested that the contract schools "should be decreased at the rate of not less than twenty per cent. a year," adding that "thus in a few years more they [*i. e.*, the contract schools] would cease to exist, and during this time the Bureau would be gradually prepared to do without them; while they might gather strength to continue without Government aid." (Rec. 15.) In pursuance of this recommendation the Indian appropriation act of 1895, in connection with the appropriation "for the support of Indian day and industrial schools and for other educational purposes," contained this proviso:

> *Provided*, That the Secretary of the Interior shall make contracts, but only with the present contract schools,

for the education of Indian pupils during the fiscal year ending June thirtieth, 1896, to an extent not exceeding eighty per cent. of the amount so used in the fiscal year 1895, and the Government shall, as early as practicable, make provision for the education of Indians in government schools. (28 Stats. 903–904.)

The Indian appropriation acts for the next four years contained the following provisions:

Act of June 10, 1896, chap. 398 (29 Stats. 345).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of architect and draftsman to be employed in the office of the Commissioner of Indian Affairs, $1,235,000, . . . And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The succeeding portions of the act contained an appropriation of $140,000 for the construction, purchase, lease and repair of school buildings and purchase of school sites, and

also direct appropriations for a number of schools, including one sectarian school, the Lincoln Institution at Philadelphia.

Act of June 7, 1897, chap. 3 (30 Stats. 79).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes, not hereinafter provided for, including pay of architect and draftsman to be employed in the office of the Commissioner of Indian Affairs, $1,200,000, . . . And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding forty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Act of July 1, 1898, chap. 545 (30 Stats. 567).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect and draftsman, to be employed in the office of the Commissioner of Indian Affairs, $1,000,000, . . . *Provided*, That the Secre-

tary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at such places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding thirty per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five: *Provided further*, That the foregoing shall not apply to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Act of March 1, 1899, chap. 324 (30 Stats. 942).

SUPPORT OF SCHOOLS.

For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, including pay of an architect, draftsman, and a laborer, to be employed in the office of the Commissioner of Indian Affairs, $1,100,000, . . . *Provided*, That the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifteen per cent. of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools: *Provided further*, That the foregoing shall not apply

to public schools of any State, Territory, County or City, or to schools herein or hereafter specifically provided for.

The appropriations for school buildings and for the support of particular schools were substantially the same as in the act of 1896.

Beginning with the Act of May 31, 1900, chap. 598 (31 Stats. 242), the appropriation for the support of schools has been in the following form, though differing slightly in amount from year to year:

> For support of Indian day and industrial schools and for other educational purposes not hereinafter provided for, $1,200,000.
>
> For construction, purchase, lease and repair of school buildings, and for sewerage, water supply and lighting plants, purchase of school sites, $200,000.

Beginning with the Act of May 31,1900, the appropriations for the support of particular schools have not included any sectarian schools.

Taking together (1) the direction to the Secretary of the Interior in 1894 to investigate the propriety of discontinuing contract schools, and to report the cost of substituting government schools for contract schools; (2) his report advocating a gradual reduction in the contract schools during a short period of years, during which period the Government should prepare to do without them; (3) the adoption of the system advocated by him, successively restricting more and more his authority to contract with such schools; (4) the declarations in the acts of 1896 and 1897 that, subject to the restricted authority granted by those acts, it was "the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school"; (5) the declaration in the act of 1899 that the appropriation there made was "the final appropriation for sectarian schools";

and (6) the fact that since 1899 no statute has granted the Secretary any authority to contract with sectarian schools for the education of Indian pupils; the conclusion is irresistible that Congress decided to abolish the entire system of government aid to such schools, and to do so by depriving the Secretary of all authority to make any more such contracts.

Moreover, as it has been shown above that the term "contract schools" was officially used as including contract schools supported from Indian treaty and trust funds, the conclusion is irresistible that Congress made no distinction between contracts as to which the money was to come from the appropriation for the support of schools, and contracts as to which the money was to come from Indian treaty and trust funds. In either case the government was the disburser of the money—the hand which directly dispensed the aid—and the money was disbursed under a contract. To deprive the Secretary of the power to make such contracts altogether was the only effectual means of preventing him from using Indian treaty and trust funds for sectarian schools, and it would operate just as effectually in regard to such funds as in regard to funds derived from the appropriation for the support of schools.

The two declarations of "the settled policy of the Government" might really have been omitted without changing the result; for the previous declaration that "the Government shall, as early as practicable, make provision for the education of Indians in government schools," following after the direction to the Secretary to investigate the whole subject, and his report in consequence, followed by the successive limitations of his power to contract, and the large appropriations for school buildings,—all this makes it clear that Congress had resolved that after the fiscal year 1899–1900, no more contracts with sectarian schools should be made. With the close of that fiscal year, therefore, the Secretary's power to contract with sectarian schools, a power already greatly reduced, came wholly to an end, and no such power was ever subsequently granted to him.

As regards the declarations of "the settled policy of the Government" it is clear that the exceptions from the complete operation of that policy, made in the appropriation acts of 1895 to 1899 inclusive, were merely temporary expedients, adopted in fairness to the supporters of the sectarian schools and to tide over the time until the Government could provide an adequate number of its own non-sectarian schools. With these permissive and temporary exceptions, Congress has, as a matter of fact, made "no appropriation whatever for education in any sectarian school," since the policy was adopted, and the policy itself has become settled in fact as far as Congress can settle it, and it can only be changed by the same authority which established it.

Admitting, therefore, that Congress can change "the settled policy of the Government," it is nevertheless clear that neither the Secretary of the Interior nor the Commissioner of Indian Affairs can do so. The words "no appropriation whatever" must bind them absolutely. Section 3678 of the Revised Statutes reads:

> All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no other.

The effect of this provision is to make unlawful the diversion of funds appropriated for one object of expenditure to another object of expenditure. (17 A. G. Opins., 481; see also 17 A. G. Opins., 574, 576; 18 A. G. Opins., 463.)

Moreover section 2097 provides:

> No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law.

From these provisions it is evident that to declare that "no appropriation whatever" shall be made for education in any sectarian school is to declare that no money derived from any appropriation whatever shall be applied to such education, because to do so would be to apply it to an object for which the appropriation was not made.

In view of the positive language of the statutes above referred to, it is not surprising that the reports of the Indian Commissioner from 1900 to 1904 inclusive recognize that the power to contract with sectarian schools no longer exists. Thus the report for 1900 says (p. 27; Appx., 81, line 31):

> In the act making appropriations for the ensuing fiscal year 1901 no authority is given to make these contracts.

The former contract schools were thereafter known as mission schools, the report stating that the Government only assumes "supervisory care over them . . . for the purpose of observing the care and attention bestowed upon the pupils, their progress, health, and general condition" (p. 20; Appx., 82, line 13).

The report for 1901 shows Hampton Institute (a nonsectarian school) as the only contract school (p. 29; Appx., 83, second paragraph), and says:

> Congress having failed to provide in the appropriation act for the fiscal year 1901 for the continuance of the *contract-school system*, those schools *did not receive Government aid during the year*. All were continued, however, as mission schools, and therefore are now classed (except Hampton Institute, for which Congress made a specific appropriation) under the general head of "mission schools."

Similarly the report for 1902 (p. 39; Appx., 89), after enumerating the various mission schools, says:

> These institutions are controlled by the church authorities, who furnish the amounts required for their support and maintenance, *Government aid to sectarian schools having been withdrawn* after Congress in the appropriation act for fiscal year 1901 discontinued the contract-school system. *The only exception* made was in the appropriation for Hampton Normal and Agricultural College, in Virginia, with which school this office has a contract for the education of 120 Indian pupils.

The report for 1903 (p. 22; Appx., 95) says:

> *Contract schools were abolished* by the discontinuance of Government aid by Congress in the Indian appropriation act of 1901. However, a special appropriation was made in the Indian appropriation act for the fiscal year 1903, for the education of 120 pupils at the Hampton (Va.) Normal and Agricultural Institute.

The report for 1904 (p. 45; Appx., 100) does not state in so many words that no government aid to sectarian schools was given, the policy in that respect being by that time well known, but the reference to the mission schools states that they are "supported by voluntary contributions," and it is expressly stated (p. 44; Appx., 101) that:

> Under special appropriation of Congress a contract was made for the education of 120 pupils in the Hampton, Va., Normal and Agricultural Institute.

If there could be any reasonable doubt as to the intention of Congress to deprive the Secretary of all power to contract with sectarian schools, these repeated official statements of the Indian Commissioner, during the five years following

the last statute which granted any such authority even to a limited extent, would seem to set all such doubt at rest. It is submitted, however, that there is really no room for any such doubt, and that the Indian Commissioner's reports simply regard the matter as so completely settled that all discussion of it must be superfluous.

In spite of these positive statements of the Indian Commissioner in the reports for 1901 to 1904 inclusive, to the effect that contract schools no longer existed, it now appears that in each of those years contracts were made with two sectarian schools on the Osage Reservation, the money being paid from the Osage treaty and trust funds, and that in 1904 a contract was made with a sectarian school in Wisconsin, the money being paid from the Menomonee log fund, which was a trust fund, but it is very significant that these contracts were *not reported to Congress*, unless a few casual references in the reports of local agents be considered as reports to Congress. Thus in the report for 1901, above quoted (Appx., 86), the Commissioner stated that the two schools on the Osage Reservation were supported by the Catholic Church, which necessarily implied that these schools were not supported by the Government, either in its capacity of trustee for the Osages, or in any other capacity, and it is only from the report of the Osage agent (Appx., 88) that one may learn that the interest of the Osage trust fund "is used in maintaining . . . the St. John and St. Louis boarding schools." As a matter of fact the Osage treaty fund was also used for that purpose.

The report for 1902 (p. 39; Appx., 91) repeats the statement that these two schools were supported by the Catholic Church, and the report of the Osage agent (p. 294; Appx., 94) merely refers to the capacity "of St. Louis contract (Catholic) school for girls" and "St. John contract (Catholic) school for boys," saying nothing as to the nature of the contracts with those schools. The reports for 1903 (p. 22; Appx., 97) and 1904 (p. 45; Appx., 102) repeat the statement that these Osage schools were supported by the Catholic Church, and

the Osage agent's reports (Appx., 99, 105) contain nothing at variance with these statements. His report for 1903 mentions the Kaw boarding school and the Osage boarding school, but makes no mention of the two sectarian schools, while his report for 1904 mentions "the two Catholic boarding schools on the Reservation," but contains nothing to suggest that these schools were operated under contract.

The Commissioner's report for 1904 (Appx., 103) also states that St. Joseph's school, on the Green Bay Reservation in Wisconsin, was supported by the Catholic Church, thereby implying, as in the case of the Osage schools, that it was not supported by any contract with the Government, but the same report has appended to it a report (p. 371; Appx., 105) from the superintendent of St. Joseph's Industrial School at Green Bay, stating that that school had depended on charitable contributions until December 1, 1903, "but after that we were aided by the Hon. Commissioner of Indian Affairs, W. A. Jones, to whom we are under great obligation for the means we have received." This aid is now seen to have amounted to $7368.38. (Rec. 41.)

The record does not disclose the precise nature of the arrangements between the Indian Commissioner and these two Roman Catholic Osage Schools in 1901–1904, nor of that made with the school at Green Bay in 1904, but as the Osage agent used the word "contract" in 1902, there must have been contracts of some sort. If those contracts were regarded as legal, it is impossible to understand why their existence should not have been fully reported to Congress, precisely as was done by the present Commissioner in the year 1905 and subsequently, in regard to all contracts made with sectarian schools; and at all events the repeated assertions that no such contracts existed indicates a belief on the part of Commissioner Jones that these Osage and Green Bay contracts were of a peculiar and exceptional nature, and that as a general proposition he had no authority to make contracts with sectarian schools.

In ascertaining the meaning of any statute, the apparent reason for the enactment of its provisions must undoubtedly have some weight; and in the present case the only fundamental reason which can be suggested for the action of Congress in abolishing, as the Court of Appeals concedes has been done, the Secretary's power to contract with sectarian schools in cases where the consideration for a contract would have to be paid out of the appropriation for the support of schools, applies equally well to cases where the consideration would be paid out of Indian treaty and trust funds. This fundamental reason was evidently the wish to conform, wherever circumstances made such conformity practical, to the spirit of the constitutional provision that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof"; and in this connection the erroneous reasoning of the Court of Appeals becomes apparent. As already intimated above, Mr. Justice Wright has looked at the whole matter exclusively from the standpoint of what he considers the rights of the Indians in Indian treaty and trust funds, not from that of the proper attitude of the Government towards sectarian bodies; although the latter, which concerns the whole population of the country, irrespective of race, is vastly more important than the former, which concerns the Indians only. Throughout his whole opinion the learned Judge is seeking to establish the difference between Indian treaty and trust funds, and money voluntarily appropriated by Congress for Indian education, without any treaty obligation; and in so doing he forgets that the particular source from which the Government derives the money which it may use for any particular purpose is of less consequence than the propriety of its action in using any money at all for such a purpose.

As is well known, the constitutional provision that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof" applies to the National Government only, not to the States, and the

former has never been charged with violation of it, so that the courts have not been called upon to define its terms with any great particularity. The nearest approach to a definition is found in Chief Justice Waite's opinion in *Reynolds v. United States* (98 U. S., 145, 164), where he quotes Jefferson's allusion to the prohibition as "building a wall of separation between Church and State," and adds:

> Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the force and scope of the amendment thus secured.

If "a wall of separation" has been built between the United States and every religious denomination, it necessarily follows that the actions of the United States must always be undenominational. This is recognized by Professor Ordronaux in his "Constitutional Legislation" (p. 235), where in discussing the term "religion," as used in the Constitution, he says:

> The Christian religion being the predominant religious belief of the people, Christianity has come to be regarded as part of the common law of the land. . . . Underlying the whole civil administration of the government, whether State or National, and in whatever form it enters into its positive laws, it is always understood as being *an undenominational rule of conduct*, because embodying those essentials of religious faith, which are broad enough to include believers in both the Old, as well as the New Testament.

The Government being bound to observe "an undenominational rule of conduct," it can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others for whom it is trustee. It cannot be trustee of a sectarian institution. If, for instance, Mr. Smithson had by his will given the whole of his property to the United

States to found a sectarian institution, the Government could not have accepted the trust, and some other trustee would have had to be appointed. It is the absolutely non-sectarian character of the Smithsonian Institution which made it possible for the Government to accept the trust.

In view of the existence of the contract school system for so many years prior to its legal termination in 1900, no court would presumably now hold that system to have been unconstitutional, and yet its termination was undoubtedly due to a desire to conform to the spirit of the Constitution even in matters to which its prohibition did not absolutely apply. The maintenance of the "wall of separation between Church and State," which the Constitution has built, undoubtedly makes it inconsistent and undesirable for the Government to participate in any way in the maintenance of a sectarian institution, and this whether the participation take the form of a payment of public money raised by taxation or of a payment of money held by it as trustee. It is the Government's participation in the maintenance of a sectarian institution which is objectionable, and it does so participate when it expends for such a purpose money which it holds as trustee, or money which it is obliged by treaty to spend for the benefit of an Indian tribe, just as much as if the money were its own, and there were no legal obligation to expend it at all.

The sectarian schools having been the first in the Indian field, and the Government having been rather slow to acknowledge any obligation to educate the Indians generally, it was perfectly natural that its first efforts in that direction should have taken the form of aiding the existing sectarian schools, and that under the then existing conditions the advantages of that system should for some time have seemed to outweigh the disadvantages of alliances with sectarian bodies. Ultimately, however, as the Government became more familiar with the whole subject of Indian education, and the experiment of non-sectarian schools, managed by the Government itself, had been successfully tried, it was

realized that the time had come for applying, in the matter of schools, that doctrine of the "wall of separation between Church and State" which the Constitution had positively imposed upon Congress as to certain matters, and which it manifestly held up as the ideal for every sphere of the Government's action.

Congress realized, therefore, that while the Government's policy of maintaining or aiding in the maintenance of sectarian schools may have been desirable as a temporary expedient, it really involved co-operation in the work of a sectarian institution, or in other words, action in a sectarian capacity, a course too clearly inconsistent with a thoroughly "undenominational rule of conduct," and with the spirit of the Constitution, to be maintained any longer than necessary, and that the necessity had ceased to exist. This realization it was which must have operated upon the mind of Congress in prohibiting these sectarian contracts, rather than any consideration in regard to the particular character of the fund which the Government used for such purposes; and it was this which alone can explain the broad language of the statutes, declaring it "the settled policy of the Government to hereafter make *no appropriation whatever* for education in *any* sectarian school," and in the successive restrictions, culminating in an absolute termination, of the Secretary of the Interior's authority to contract with such schools.

Seeing then that Congress must have intended its prohibition of contracts for education in sectarian schools to be an absolute prohibition upon the Secretary of the Interior, without regard to the particular character of the fund which he might use for the purpose, the contention that this prohibition affected only the use of the money appropriated by Congress for the support of schools must necessarily fall. The Supreme Court of the District of Columbia recognized the truth of this, as far as concerned the Sioux treaty fund, holding that the use of that fund for contracts with sectarian schools was within the prohibition, but the learned judge sitting in the

Court of Appeals denies even this. It is worth while to examine his reasons for reaching such a conclusion. The reasons appear to be these:

(1) The appropriation for "Support of Schools" differs in "nature and character" from the appropriation for "Fulfilling Treaty Stipulations." (Rec. 60.)

(2) The two appropriations were made separately, and the prohibition of contracts with sectarian schools is found "only in juxtaposition with the very words creating" the appropriation for the support of schools. (Rec. 60.)

(3) The declarations of "the settled policy of the Government," found in the acts of 1896 and 1897, were nullified by the appropriations subsequently made for sectarian schools. (Rec. 60–61.)

(4) The successive reductions, in the statutes of 1895–1899, of the amount available for contracts with sectarian schools, reached only to the appropriation for the support of schools. (Rec. 61.)

(5) Assuming that the declaration of "the settled policy of the Government" is still binding, it cannot involve "the policy of depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money." (Rec. 61–62.)

These reasons overlook entirely the fact that at the time when the statutes under consideration were enacted the term "contract schools" was always officially used to include schools supported by contracts payable out of Indian treaty and trust funds, and they also overlook (except to a slight degree in connection with the fifth reason) what has been shown above to be the fundamental reason for the action of Congress in the matter. Had the learned judge kept these two matters clearly before him, his conclusion might have been different.

As to the first reason, there is less difference between the appropriation for "Support of Schools" and the appropriation for "Fulfilling Treaty Stipulations" than the learned judge assumes, as regards so much of the latter as was in-

tended for Indian education. In the Sioux treaty, and similar treaties with other tribes, the Government bound itself to provide a sufficient number of schools for the Indians with whom the treaty was made, and the money available for the fulfillment of these obligations was taken from what came to be called the treaty funds, *i. e.*, the appropriations made each year for fulfilling the stipulations of the respective treaties. These appropriations were made annually, out of the public moneys of the United States, in the same appropriation bill which included the appropriation for the support of schools. In fact a portion of the Sioux treaty fund was specifically appropriated "for support and maintenance of day and industrial schools, including erection and repairs of school buildings" (substantially the same language which had been used for many years in the app opriatoin for "Support of Schools"), although the other portion of the treaty fund, specifically appropriated "for subsistence of the Sioux and for purposes of their civilization," was also regarded as available for the support of schools. (See payments to Holy Rosary school, Pine Ridge, and Immaculate Conception Mission School, Crow Creek. Rec. 44–45.)

The only difference between the appropriation for "Fulfilling Treaty Stipulations" and that for "Support of Schools" was, therefore, that the former was to fulfill obligations deliberately assumed by treaty, and therefore legally binding, while the latter was made to fulfill what was believed to be the moral obligation of the Government to educate its Indian wards, either where no treaty had been made for such purpose, or where the expenditure called for by the treaty might be inadequate. The money appropriated was in both cases of the same kind, (viz., public money raised by the taxation of the citizens), the appropriation was in both cases made in precisely the same way, and in fact in the same statute, and the ultimate disposition of the money was made in both cases through precisely the same channels (viz., the officers of the Bureau of Indian Affairs in the Department of the Interior), and

for the same purposes, viz., the support of schools. In both cases alike, if any of the money was to be applied for Indian education in sectarian schools, this would have to be done by some form of contract, entered into between the Secretary of the Interior or the Commissioner of Indian Affairs, on behalf of the Government, on the one side, and some sectarian body on the other. The contract would necessarily be in the same form in both cases, the only difference being in the designation of the precise appropriation out of which payments were to be made; the payments would be made in precisely the same way, viz., by warrants drawn upon the United States Treasury; and the relations between the United States Government and the sectarian body would be precisely the same in all respects, whether the money due under the contract were paid from the appropriation for "Support of Schools" or from the appropriation for "Fulfilling Treaty Stipulations." If, therefore, Congress intended to conform to the spirit of the constitutional requirement of an undenominational rule of action, its prohibition of contracts with sectarian schools must have been intended to prohibit all such contracts, without regard to the particular appropiation used in payment.

The learned judge says, however, that "in the absence of further legislation concerning the particular funds involved at bar, the situation may be paralleled by conceiving an instance of the education of a *cestui que trust* through application by the trustee of a trust fund created for that purpose. Once a trust fund be created and its use declared, the trustee is but the medium for its application in the particular manner. It is not his function to attach limitations or restrictions of his own." (Rec. 60.)

If the Government be trustee, it is nevertheless much more than the medium for the application of the trust in the particular manner. It is also the creator of the trust, and it retains control over the disposition of the money. The Sioux trust fund is required to be used "under the direction of the

Secretary of the Interior," and it cannot be doubted that Congress can control the Secretary in his direction of the use of that fund. So in the case of the treaty fund, Congress never bound itself to appropriate money to be applied in accordance with the wishes of individual Indians, or even of the whole tribe, but it agreed to provide "schools and instruction in mechanical and agricultural arts," reserving to the Government the right to decide what those schools and that instruction might be. Moreover, by the act of March 2, 1889, sec. 17 (25 Stats. 894), continuing this treaty fund for twenty years longer, the agreement to maintain it was expressly made "subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education." This provision unquestionably reserved to Congress the right to change the system, or any part of it, at any time, provided that "equivalent benefits" were secured to the Indians. Whatever legislation, therefore, Congress thereafter enacted, affecting in any way the Secretary of the Interior's authority to make contracts with sectarian schools, necessarily constituted a "modification" within the meaning of the act of March 2, 1889.

The learned judge says that "it is not his [the trustee's] function to attach limitations or restrictions of his own"; but yet there must be some limitations or restrictions upon the will of the officer charged with the administration of the trust, and who then is entitled to attach them? The Indians? Had the Indians who wished a contract to be made with the St. Francis School any legal right to compel it to be made? If the Secretary had refused the request, could a court have compelled him, by any legal process, to make such a contract? The very idea is absurd. As far as concerns legal right to direct the making of this contract, the Indians had no more to do with it than if it had been made without any petition from any of them, or even in opposition to their unanimous protest. There are only two men who can be regarded as legally responsible for the making of this contract, viz., the

Commissioner who executed it and the Secretary who approved it.

But the powers of the Commissioner and the Secretary are necessarily subject to limitations and restrictions, and Congress is necessarily the body possessing the "function to attach limitations or restrictions." This is not a case of Congress passing laws in conflict with a treaty, but simply of controlling the action of the Secretary of the Interior in a matter which a prior treaty and statutes had placed under his direction either directly or by necessary implication from the absence of any disposition whatever. Yet even if Congress had intended to pass a law in conflict with the treaty, it could have done so, for this court has said:

> In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise of guardianship over their interests, and that such authority might be implied, even though opposed to the strict letter of a treaty with the Indians . . . .
>
> Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government. Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and of course a moral obligation rested upon Congress to act in good faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, Chinese Exclusion Case, 130 U. S. 581, 600, the legislative power might pass laws in conflict with treaties made with the Indians. (*Lone Wolf vs. Hitchcock*, 187 U. S. 553, 565.)

For the learned judge to say that there is an "absence of further legislation concerning the particular funds involved

at bar," is simply to beg the question. It is true that there is no further legislation which names those particular funds, but there is legislation, couched in very positive and comprehensive language, in regard to contracts for which, as was well-known, portions of these funds had for many years been used. How then is it reasonable to contend that contracts for which these particular funds are used were intended to be excluded from the operation of the very positive and comprehensive language employed?

In this connection it should not be overlooked that the money appropriated by Congress for the Sioux treaty fund was not regarded by that body as the property of the Indians. Congress has agreed to provide "schools and instruction in mechanical and agricultural arts," but not to appropriate any definite sum for the purpose, and hence so much of the appropriation as remained unexpended at the close of any fiscal year would have to be covered back into the Treasury in accordance with Revised Statutes, §3690, unless Congress should otherwise direct. This is conclusively shown by the fact that the appropriations for 1903 (Act of May 27, 1902; 32 Stats. 245, 252) and subsequent years provide for a reappropriation of the unexpended balance for the previous year. It is clear, therefore, that the Sioux treaty fund was simply public money of the United States, appropriated for the performance of certain treaty obligations which might or might not require the entire appropriation, and in this respect it did not differ from other appropriations of the public money of the United States.

As to the second reason of the learned judge below, it is true that the appropriations for "Support of Schools" and for "Fulfilling Treaty Stipulations" were made separately, but this was a mere matter of convenience. The former was made for the benefit of all the tribes for which, in the judgment of the Indian Commissioner, it was desirable that the Government should maintain schools, and also for a few schools specially named, and this appropriation was entirely

for schools, whereas the latter was made for the fulfillment of a number of treaties with different tribes, the obligations of each treaty differing in amount and to some extent in character, and relating to other matters besides education. It was therefore practically impossible to combine these two kinds of appropriations together in a single paragraph, but they were always made in the same statute.

It is also true that the legislation in regard to contracts with sectarian schools is "found only in juxtaposition with the very words creating" the appropriation for the support of schools, but this simply illustrates the patchwork character of much of our legislation. Some of the great pieces of constructive legislation which Congress occasionally enacts may be scientifically drawn, but in the main it is not so, and the habit of injecting legislation of a general and permanent character into an appropriation bill is too well known to cause surprise. It is submitted that the natural meaning of the words used and the apparent reason for the new legislation must control, rather than the mere portion of the statute in which such new legislation chances to be placed. As a matter of fact, there is nothing in the physical position of the legislation in regard to contracts with sectarian schools to warrant the inference of the learned judge below. Congress was appropriating for the support of Indian schools, for which object, in the case of certain tribes, certain other appropriations, made in the same statute, were also partly available. Congress also wished to limit and ultimately abolish the power, previously exercised by the Secretary of the Interior, to make contracts with sectarian schools, the money for such contracts being, as was well known, paid from both kinds of appropriations. Had Congress wished to deal with the matter only so far as the appropriations for "Support of Schools" were concerned, it would naturally have used some such language as this:

> (In the Act of August 15, 1894, chap. 290.) *Provided*, that the Secretary of the Interior is hereby directed

to inquire into and investigate the propriety of discontinuing contract schools, *except such as can be supported from appropriations made in fulfillment of treaty stipulations* . . . and that he submit to Congress . . . an estimate of the annual cost, if any, of substituting government schools for contract schools (*other than such as can be supported from appropriations to fulfil treaty stipulations*), together with such recommendations as he may deem proper.

(In the Act of June 10, 1896, chap. 398.) And it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school, *except appropriations for schools made in fulfillment of treaty stipulations; Provided*, that the Secretary of the Interior may make contracts with contract schools . . . and to an amount not exceeding fifty per cent. of the amount so used *from the appropriation for "Support of Schools"* for the fiscal year eighteen hundred and ninety-five.

(In the Act of March 1, 1899, chap. 324.) *Provided*, that the Secretary of the Interior may make contracts with contract schools . . . and to an amount not exceeding fifteen per cent. of the amount so used *from the appropriation for "Support of Schools"* for the fiscal year eighteen hundred and ninety-five, . . . this being the final appropriation for sectarian schools, *except appropriations made in fulfillment of treaty stipulations, which appropriations may continue to be used for sectarian schools.*

The acts of 1895, 1897 and 1898 would also have contained similar language, and the matter would have been settled; but as it was, Congress used broad and comprehensive language, applicable to all contracts with sectarian schools, without regard to the particular appropriations which might be used for them, and it must be presumed to have done so because

such language best expressed its intention. This language is entirely too broad and comprehensive to admit of being limited to one particular species of contracts with sectarian schools, in the absence of any positive evidence that Congress used it in that limited sense; and mere juxtaposition with the appropriation for "Support of Schools" cannot warrant its being so limited. Even the learned judge is not positive in his view, but only thinks it "likely" that the restriction was limited in its scope. The likelihood is less than he assumes, especially as he bases it on an exaggerated idea of the "significance" of the distinction between "treaty obligations" and "school gratuities." They are undoubtedly distinct as regards the obligation to appropriate the money, but when once this has been done they are precisely similar (in so far as treaty funds are used for education) as regards the objects to which and the manner in which the money is applied.

As to the third reason, the learned judge's remarks as to the declaration of policy are not wholly consistent. He first says, "If not impossible, it is at least difficult to accord to this phraseology the effect of a declaration of permanent policy, in view of the consideration that the so-called policy announced in one year is reversed the next" (Rec. 61); but on the same page, after suggesting that Congress might have "intended in each year a permanent policy and deliberately and understandingly postponed it in the next," he says, that it is "more likely that Congress never intended that the policy proclaimed should become operative or effective until after the appropriation of 1898," meaning, of course, 1899. This last suggestion is undoubtedly correct, but, if it means anything at all, it means that Congress did intend "to accord to this phraseology the effect of a declaration of permanent policy" after the five years (suggested by the Secretary of the Interior as a reasonable period during which to gradually reduce the contracts with sectarian schools) should have elapsed; but this is the very effect which the learned judge thought it impossible, or at least difficult "to accord."

That this declaration, twice announced, was really intended to stand (subject to the temporary and exceptional liberty of contract given to the Secretary during the transition period, when the substitution of government schools for contract schools was gradually taking place) as a piece of permanent legislation until Congress should see fit to modify or repeal it, is officially recognized by the fact that it appears in Vol. 2 of the Supplement to the Revised Statutes, at pages 517 and 629. As Congress has acquiesced in the printing of this declaration in this official publication, it is evident that Congress regards it as forming a part of that "permanent and general legislation" which the supplement to the Revised Statutes is authorized to contain. (See Act of Feb. 27, 1893, sec. 2; R. S. Supp., vol. 2, p. 91.)

In stating his fourth reason (Rec. 61), the learned judge undertakes to summarize the provisions of the Acts of 1895–1899 on this point, but he misquotes and apparently misunderstands them, thereby reaching an erroneous conclusion. He speaks of them as "providing in 1896 [this should be "for 1896"] in connection with the gratuitous appropriation, that the Secretary might expend 80 per cent. of the sum spent in 1895," and so on in regard to the succeeding four years; but what these acts really provided was "that the Secretary of the Interior may *make contracts* with contract schools, . . . but shall only *make such contracts* . . . to an amount not exceeding 50 [Act of 1896] per cent. of the amount so *used* for the fiscal year eighteen hundred and ninety-five." The actual language of Congress is very different from the learned judge's version of it. It does not deal directly with expenditure of money, but with the power to make contracts, without which no money could properly be expended for non-government schools, whether from these appropriations or from any other source. The word "used" employed by Congress, suggests a different meaning from the word "spent," which is employed by the learned judge. "Spent" might possibly justify the learned judge's idea that

Congress referred only to the appropriation for "Support of Schools," but "used" would seem to recognize, what was well known to be the fact, that the Secretary might have the use of Indian treaty and trust funds for this purpose, as well as the appropriation for "Support of Schools."

The effect of this incorrect version of the provisions of these acts of Congress, in connection with the words "this being the final appropriation for sectarian schools," is thus expressed:

> Thus gradually eliminating in connection with the gratuity [i. e., the appropriation for "Support of Schools"] what he was directly authorized to expend out of the gratuity, it seems equally manifest that Congress considered the limitation as reaching only to the gratuity.

The words, "this being the final appropriation for sectarian schools," cannot fairly be understood as narrowing the application of the broad and comprehensive language used in restricting the Secretary's power to contract with sectarian schools. These words simply mean "this being the final appropriation made in pursuance of the policy of gradually reducing the number of contract schools, as suggested by the Secretary of the Interior in 1894, and carried out by Congress during the succeeding years, and hereafter no money shall be appropriated for such schools." As this particular appropriation was made concurrently with that of the Sioux treaty fund, the use of that fund for contracts with sectarian schools was of course not affected for that year, but by the next year the policy adopted by Congress took effect completely, and there was no longer any authority to make the contracts, so that neither Indian treaty funds nor any other funds could lawfully be used for such contracts.

In his fifth reason the learned judge says:

> Well may it be said that as to national voluntary contributions out of the public funds, to the cause of

> Indian education, the taxpayers of the United States, who are adherents to divers creeds and to none, may claim to be consulted. The injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed, or in the farming out by the Government of its education of Indians to a particular sect, is manifest, and doubtless impressed Congress with a determination that whatever gratuitous education it afforded should not be in creeds, nor paid for to this, that, or the other sect as such. (Rec. 61–62.)

This is certainly true, but it is not the whole truth. The condemnation of "the farming out by the Government of its education of Indians to a particular sect" does indeed go pretty close to the root of the matter, and this is precisely what the appellants seek to restrain; but taking the learned judge's statement as a whole, it must be said that the commercial point of view is rather too narrow to be adopted in a question of this sort. It is not the application of any particular number of dollars to sectarian education, nor the application of dollars belonging to any particular fund, which ought chiefly to concern the taxpayers, or Congress, or this Court. The payment of money is of course involved in the question, and the appellants have brought this suit because they have an interest in the money sought to be used; but, as already stated above, there was a reason for abolishing contracts with sectarian schools, more fundamental than that of mere dollars and cents, and the dignity of Congress compels the assumption that it was that fundamental reason which influenced that body. Congress must have realized that as soon as it was manifest that Indians could be successfully educated by the Government in its own non-sectarian schools, the Government became bound to observe that "undenominational rule of conduct" which the Constitution prescribes, and was therefore bound to break off all contractual relations with

sectarian schools; and from this point of view such contractual relations are just as objectionable, whether the particular fund expended in consequence of them comes into the Interior Department's hands from one source or another.

Moreover, even from the dollar and cent standpoint, the distinction between the use of money voluntarily appropriated by Congress, and that of money appropriated in fulfillment of treaties, for sectarian education, is not material. The "farming out by the Government of its education of Indians to a particular sect," a practice which the learned judge so properly condemns, takes place just the same whether the Government has assumed the duty of education gratuitously or as one of the considerations of a treaty. Then, too, the Government is no less bound to expend any Indian funds in its charge for the benefit of the tribe as a whole than it is to expend the public funds for the benefit of the nation as a whole, and "the injustice to people of one creed in having their money applied to the encouragement and strengthening of schools which teach another creed" is the same whether the "people" be taxpayers or Indians, and whether "their money" be money raised from taxes levied upon them or money which is to be expended for their benefit in consideration of their cession of lands or property rights to the Government.

Admitting that the policy of forbidding contracts with sectarian schools is still binding "as to national voluntary contributions out of the public funds," the learned judge holds, however, that to regard it as binding, in cases where Indian treaty and trust funds are available for education, would be "depriving a religious Indian of the liberty of educating his children in a school of his own sect at the cost of his own money." This view is based on a misconception of the relation of the Indian to these treaty and trust funds. He seems to think that these funds are all divided among the Indians of the tribe per capita, and a definite sum placed to the credit of each and expended for his benefit, and that the

Indians have a right to designate how their respective shares shall be expended. Nothing of the sort is the case. Per capita payments may indeed be made out of one half of the interest of the Sioux trust fund, but the funds to be used for the contract in the present case are those "which are not susceptible of equal division," and as to which "there is no per capita division of any balance." (Rec. 33, ans. No. 5.) These funds are exclusively tribal funds, to be expended exclusively for the benefit of the tribe as a whole, and no Indian has any individual property right in them. The individual Indian, religious or irreligious, has no right to call any part of these funds "his own money," as the learned judge calls it, or to demand "the liberty of educating his children in a school of his own sect at the cost of" that money, any more than the religious taxpayer has a right to call his proportion of the money raised by taxation his own money, and to demand that it be applied to educating his children in a school of his own sect.

The individual Indian has a right to demand that these tribal funds be expended *according to law*, but there his right in them begins and ends. The appellants have availed themselves of this right to bring this suit, but they could not have demanded that a similar contract be made with the school of their own religious body, which exists on the Rosebud Reservation. (Appx., 103.) If it be thought that the Indians ought in fairness to have greater individual rights in these funds, and that a per capita distribution should be made, so that the Indians could themselves spend their per capita shares for sectarian education, that is a matter for Congress to consider; but a court cannot enlarge the rights of the Indians beyond the bounds which Congress has fixed.

From this review of the grounds given by the learned judge, sitting in the Court of Appeals, in support of his conclusion, it appears that they are partly based upon misconceptions of fact and partly upon erroneous lines of reasoning. They appear to fail at every point, and it is submitted that the

only reasonable conclusion in regard to the intention of Congress, in its legislation as to contract schools in the years 1894–1899 inclusive, is that the power of the Secretary of the Interior to make or authorize, on behalf of the United States, any contract for the education of Indian pupils in sectarian schools, was to cease at the close of the fiscal year 1900.

(3)

THE SECRETARY'S POWER TO MAKE SUCH A CONTRACT WAS TAKEN AWAY ALTOGETHER, AND NOT MERELY AS REGARDS CONTRACTS WHERE THE MONEY WAS TO BE PAID OUT OF APPROPRIATIONS BY CONGRESS EXPRESSLY FOR THE SUPPORT OF INDIAN SCHOOLS.

(4)

AS REGARDS THE TAKING AWAY OF THE SECRETARY'S POWER TO MAKE SUCH A CONTRACT, NO DISTINCTION CAN BE DRAWN BETWEEN MONEY EXPRESSLY APPROPRIATED BY CONGRESS FOR THE SUPPORT OF INDIAN SCHOOLS AND MONEY APPROPRIATED BY CONGRESS IN FULFILLMENT OF INDIAN TREATIES AND AVAILABLE FOR EDUCATION.

These two propositions are merely corollaries of the second proposition above stated, and necessarily have been fully considered in the foregoing argument.

(5)

AS REGARDS USE UNDER CONTRACTS WITH SECTARIAN SCHOOLS, NO DISTINCTION CAN BE DRAWN BETWEEN MONEY EXPRESSLY APPROPRIATED BY CONGRESS FOR THE SUPPORT OF INDIAN SCHOOLS AND MONEY PAID BY THE GOVERNMENT AS INTEREST ON INDIAN FUNDS HELD IN TRUST BY IT.

The opinion of the Court of Appeals states that "all parties agree that between the two 'Funds' there is no distinction so far as the efforts of the complainants' bill is concerned, nor does any distinction occur to us in this regard." This statement correctly represents the appellants' view, but as

the Supreme Court of the District of Columbia drew a distinction between the treaty fund and the trust fund, granting an injunction in regard to the one, but refusing it as to the other, some consideration of the matter seems advisable. The most obvious difference between the two funds is that the treaty fund is provided by an appropriation made annually by Congress in the Indian Appropriation Act, and only so much of it is available as is used in the year for which it is appropriated, whereas the principal of the trust fund is a fixed sum of $3,000,000 deposited in the Treasury to the credit of the Sioux tribe, the interest of which, at five per cent, is used, under the direction of the Secretary of the Interior, for the purposes designated in the Act of March 2, 1889, sec. 17 (25 Stats. 858, 895), including reasonable cash payments per capita. It is submitted, however, that this difference cannot affect the Secretary's power to contract with sectarian schools, nor can it prevent the use of the income of the trust fund from being controlled by the declaration of the policy of the Government in regard to sectarian schools.

While in the case of the Sioux trust fund the appropriation is made by a different system from that pursued with the Sioux treaty fund, there is still an appropriation within the meaning of the acts of 1896 and 1897, declaring it to be "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," and the act of 1899 which said, "this being the final appropriation for sectarian schools." The word "appropriation," used as it is here, in statutes of the class known as "appropriation acts," is necessarily technical. It means an appropriation by Congress of money in the Treasury of the United States. Restricted as this meaning is, however, the whole phrase, "make no appropriation whatever," is as broad a phrase as the limits of that meaning will possibly permit, and it refers to any and every kind of appropriation that Congress can make, without regard to the method of such appropriation. "No appropriation *whatever*" is a phrase that can

have no limits but those which necessarily restrict the word "appropriation" itself.

The appropriations of funds in the United States Treasury are of two kinds, viz., those made for each successive fiscal year, and permanent annual appropriations. The latter are provided for in sections 3687 to 3689, Revised Statutes, and cover a number of matters (the cost of revenue collection, payment of interest on the public debt, etc.) which are expected to recur every year, either indefinitely or for a considerable period, so that it is held inadvisable to make a special appropriation for them every year. When the Revised Statutes were compiled, the Indian trust funds were all invested (under sections 2095–2096), and the income received was paid to the Indians or expended for them, and this system was not changed until the act of April 1, 1880 (21 Stats. 70). That act, providing for the payment of interest upon Indian trust funds deposited in the Treasury to the credit of Indian tribes, such payment to "be made in the usual manner, as each may become due, without further appropriation by Congress," really constitutes a permanent annual appropriation of such interest. Had that change been made before the Revised Statutes were compiled, the interest on the Indian trust funds would presumably have been included in the permanent annual appropriation system. The words "*without further* appropriation by Congress" clearly show that the provision of the act of 1880 constituted an appropriation once for all, or in other words a permanent annual appropriation.

The words "no appropriation whatever," in the acts of 1896 and 1897, must have been used advisedly, to cover appropriations of every kind, whether for a particular fiscal year or permanent annual appropriations. These words must be understood as meaning "no appropriation whatever, whether in the form of an appropriation limited to any fiscal year or by the operation of a permanent annual appropriation heretofore or hereafter established." As so understood, these words clearly apply to the permanent annual appropriation of the income of the Sioux trust fund.

No distinction can properly be made on the ground that section 17 of the act of March 2, 1889 (25 Stats. 858, 894–5), provides that the interest of the Sioux trust fund "shall be appropriated, *under the direction of the Secretary of the Interior*, to the use of the Indians receiving rations and annuities upon the reservations created by this act, . . . as follows: One half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians." It was contended in the court below that this provision gives the Secretary of the Interior an unrestricted right to use the money for the education of the Indians at any school which he may think suitable for the purpose, but it is submitted that his discretion must necessarily be subject to the control of Congress. For some years after 1889 Congress did not undertake to control the Secretary in this respect, but in and after 1895 it did, and in taking away whatever authority to contract for the education of Indian pupils in sectarian schools he might previously have been supposed to have, Congress necessarily set certain bounds to the discretion given him under the act of 1889.

It is therefore submitted that the decree of the Court of Appeals of the District of Columbia should be reversed, and the case remanded with directions that the Supreme Court of the District of Columbia issue an injunction as prayed for in the bill, with costs to the appellants. If, however, the Court should for any reason hold that the injunction should issue only as regards the use of the Sioux treaty fund for payment under the contract made in this case, even then full costs should be allowed to the appellants. The Supreme Court of the District of Columbia, when granting an injunction as regards the use of the treaty fund, ordered that each side should pay its own costs. This was assigned as error in the Court of Appeals, but the decision of that court made it unnecessary for it to consider the matter.

It is an established rule in equity that costs are prima facie allowable to the prevailing party, and it has been held

that this rule should be departed from only in cases where it would be inequitable to apply it. (*Hunter vs. Marlboro'*, 2 W. & M., 168; Fed. Cas., No. 6908; *Hovey vs. Stevens*, 3 W. & M., 17; Fed. Cas., No. 6746; *Swentzel vs. Penn Bank*, 147 Pa., 140, 154.)

The proper test as to the allowance of costs to a plaintiff is the question whether the action of the defendant has necessitated the bringing of the suit, and if it has, the costs properly fall upon the latter party. (*Madeley vs. White*, 2 Col. App., 408; *Taft vs. Schwamb*, 81 Ill., 289, 304; *Moon vs. Story*, 8 Dana (Ky.), 226; *Iasigi vs. C. B. & Q. R. R. Co.*, 129 Mass., 46; *Haviland vs. Bloon*, 6 Johns. Ch. (N. Y.), 178; *Pangburn vs. Miles*, 2 Abb. N. C. (N. Y.), 42.) In the present case the filing of this bill was wholly necessitated by the action of the Commissioner of Indian Affairs and the Secretary of the Interior, who are in fact the principal defendants, the others being merely joined ex majore cautela, to provide for all possible contingencies.

The expression "prevailing party," as used in a rule of chancery awarding costs, applies to a claimant who has prevailed on the main issue, though not to the full extent of his claim, yet to a greater extent than admitted by the defendant. (*Weston vs. Cushing*, 45 Vt., 531.)

Where a bill was filed for discovery and an injunction, and discovery having been awarded, it was ultimately ascertained that only $9 then remained unappropriated, and an injunction issued in regard to that trifling amount, the costs were allowed the plaintiff because the action of the defendant had necessitated the bringing of the suit. (*Ross vs. Adams*, 5 Dana (Ky.), 509.)

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# APPENDIX.

The portions of the Commissioner's reports used as evidence under the stipulation of April 19, 1907 (Rec. 49–50) are as follows:

## REPORT FOR 1894 (Page 16).

GOVERNMENT AID TO CONTRACT SCHOOLS.

The amount set apart for the current fiscal year for the contract schools is shown in detail in the following table; also the amount set apart for the previous year:

TABLE 9.—SCHOOLS FOR INDIANS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA PER ANNUM, AND TOTAL AMOUNTS REQUIRED FOR FISCAL YEARS ENDING JUNE 30, 1894, AND JUNE 30, 1895.

| | | 1894. | | 1895. | |
|---|---|---|---|---|---|
| *Location of school.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* | *Number allowed.* | *Amount required.* |
| Avoca boarding, Minn. | $108 | 35 | $3780 | .. | .. |
| Baraga, Michigan: | | | | | |
| Chippewa boarding | 108 | 50 | 5400 | 45 | $4860 |
| Bayfield boarding, Wis. | 125 | 30 | 3750 | 30 | 3750 |
| Bernalillo boarding, N. M. | 125 | 60 | 7500 | 60 | 7500 |
| California: | | | | | |
| Hopland day | 30 | 20 | 600 | 20 | 600 |
| St. Turibius day | *30 | 20 | 600 | 20 | *3240 |
| Carried forward | | | $21,630 | | $19,950 |

*In 1894 this was made a boarding school and $108 per pupil allowed instead of $30.

| Location of school. | Rate per capita per annum. | 1894. Number allowed. | 1894. Amount required. | 1895. Number allowed. | 1895. Amount required. |
|---|---|---|---|---|---|
| Brought forward..... | | | $21,630 | | $19,950 |
| California (*Continued*): | | | | | |
| Ukiah day..... | $30 | 20 | 600 | 20 | 600 |
| Pinole day..... | 30 | 20 | 600 | 20 | 600 |
| Colville Agency, Wash.: | | | | | |
| Colville boarding..... | 108 | 65 | 7020 | 65 | 7020 |
| Coeur d'Alene boarding..... | 108 | 70 | 7560 | 70 | 7560 |
| Crow Creek Agency, S. D.: | | | | | |
| Immaculate Conception boarding..... | 108 | 95 | 10260 | 60 | 6480 |
| Crow Agency, Mont.: | | | | | |
| St. Xavier's Mission boarding..... | 108 | 105 | 11340 | 85 | 9180 |
| Devil's Lake Agency, N. D.: | | | | | |
| St. Mary's boarding, Turtle Mountain..... | 108 | 130 | 14040 | 130 | 14040 |
| Ft. Belknap Agency, Mont.: | | | | | |
| St. Paul's boarding..... | 108 | 150 | 16200 | 135 | 14580 |
| Graceville boarding, Minn..... | 108 | 50 | 5400 | 50 | 5400 |
| Green Bay Agency, Wis.: | | | | | |
| St. Joseph's boarding..... | 108 | 130 | 14040 | 130 | 14040 |
| Harbor Springs boarding, Michigan..... | 108 | 95 | 10260 | 95 | 10260 |
| La Pointe Agency, Wis.: | | | | | |
| Red Cliff day..... | 30 | 30 | 900 | 30 | 900 |
| Bad River day..... | 30 | 20 | 900 | 15 | 450 |
| Bayfield day..... | 30 | 30 | 900 | 30 | 900 |
| Lac Court d'Oreilles day ... | 30 | 40 | 1200 | 40 | 1200 |
| St. Mary's boarding..... | 108 | 50 | 5400 | 50 | 5400 |
| Morris boarding, Minn..... | 108 | 90 | 9720 | 80 | 8640 |
| North Yakima boarding, Wash | 108 | 50 | 5400 | 35 | 3780 |
| Osage Agency, Okla.: | | | | | |
| Pawhuska boarding..... | 125 | 50 | 6250 | 50 | 6250 |
| Hominy Creek boarding.... | 125 | 40 | 5000 | 40 | 5000 |
| Carried forward..... | | | $154,620 | | $142,230 |

| Location of school. | Rate per capita per annum. | 1894. Number allowed. | 1894. Amount required. | 1895. Number allowed. | 1895. Amount required. |
|---|---|---|---|---|---|
| Brought forward..... | | | $154,620 | | $142,230 |
| Pine Ridge Agency: | | | | | |
| Holy Rosary boarding ..... | $108 | 125 | 13500 | 140 | 15120 |
| Holy Rosary boarding (supplemental)..... | 108 | 50 | 5400 | .. | .. |
| Pueblo Agency, N. Mex.: | | | | | |
| Acoma day..... | 30 | 25 | 750 | 26 | 750 |
| Isleta day..... | 30 | 30 | 900 | 30 | 900 |
| Laguna day (Pahuate)..... | 30 | 25 | 750 | 25 | 750 |
| Jemez day..... | 30 | 35 | 1050 | 35 | 1050 |
| San Juan day..... | 30 | 22 | 660 | 22 | 660 |
| Santa Domingo day..... | 30 | 25 | 750 | 25 | 750 |
| Taos day..... | 30 | 20 | 600 | 20 | 600 |
| Rosebud Agency, S. Dak.: | | | | | |
| St. Francis boarding..... | 108 | 95 | 10260 | 95 | 10260 |
| San Diego boarding, Calif..... | 125 | 95 | 11875 | 95 | 11875 |
| Sac and Fox Agency, Okla.: | | | | | |
| Sacred Heart boarding..... | 108 | 50 | 5400 | 40 | 4320 |
| St. Peter's Mission boarding, Montana..... | 108 | 180 | 19440 | 180 | 19440 |
| St. Catherine's boarding, Santa Fe, N. Mex..... | 125 | 100 | 12500 | .. | .. |
| Shoshone Agency, Wyo.: | | | | | |
| St. Stephen's boarding..... | 108 | 75 | 8100 | 65 | 7020 |
| Tongue River Agency, Mont.: | | | | | |
| St. Labre's boarding..... | 108 | 40 | 4320 | 40 | 4320 |
| Tulalip Agency, Wash.: | | | | | |
| Tulalip boarding,..... | 108 | 100 | 10800 | 100 | 10800 |
| White Earth Agency, Minn.: | | | | | |
| St. Benedict's orphan bdg... | 108 | 90 | 9720 | 90 | 9720 |
| Red Lake boarding..... | 108 | 40 | 4320 | 40 | 4320 |
| Crow Reservation, Mont: | | | | | |
| Montana Indust. boarding . | 108 | 50 | 5400 | 50 | 5400 |
| Carried forward..... | | | $281,115 | | $250,285 |

| *Location of school.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* | *Number allowed.* | *Amount required.* |
|---|---|---|---|---|---|
| Brought forward..... | | | $281,115 | | $250,285 |
| Crow Creek Agency, S. Dak.: | | | | | |
| Grace Howard Miss. home.. | .. | 30 | 3000 | 30 | 3000 |
| Greenville Boarding, Calif.... | *$75 | 40 | 1800 | 40 | *4320 |
| Greenville day, Calif..... | 30 | 20 | 240 | .. | .. |
| Halstead boarding, Kans..... | 125 | 30 | 3750 | 30 | 3750 |
| Omaha Reservation, Nebr.: | | | | | |
| Mission boarding..... | 108 | 45 | 4860 | .. | .. |
| Plum Creek boarding, Leslie, S. Dak..... | 108 | 25 | 2700 | 15 | 1620 |
| Point Iroquois day, Bay Mills, Mich..... | 30 | 30 | 900 | 20 | 600 |
| Santa Fe boarding, N. Mex.... | 125 | 50 | 6250 | .. | .. |
| do (supplemental)..... | 125 | 15 | 1875 | .. | .. |
| Sisseton Agency, S. Dak.: | | | | | |
| Goodwill Mission boarding.. | 108 | 60 | 6480 | .. | .. |
| Shoshone Agency, Wyo.: | | | | | |
| Mission boarding..... | 108 | 20 | 2160 | 20 | 2160 |
| Springfield, S. Dak., Hope boarding..... | 108 | 45 | 4860 | 45 | 4860 |
| Tucson boarding, Ariz..... | 125 | 150 | 18750 | .. | .. |
| do (supplemental)..... | 125 | 50 | 6250 | .. | .. |
| Wittenberg boarding, Wis..... | 108 | 140 | 15120 | 140 | 15120 |
| Total..... | | | $360,110 | | $285,715 |

It will be seen from the foregoing table that for contract schools, not specifically appropriated for, a reduction has been made from last year of $74,095, or over 20 per cent. Contracts have been declined or reduced wherever it could be done without depriving children of school privileges.

The following item, inserted in the Indian appropriation act for this year, and the debates in Congress while the bill was under discussion, seem to look in the same direction of

* In 1894 this was made a boarding school and $108 per pupil allowed instead of $30.

gradually discontinuing Government aid to schools for Indians carried on under private control:

> The Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools, and whether, in his judgment, the same can be done without detriment to the education of the Indian children; and that he submit to Congress at the next session the result of such investigation, including an estimate of the additional cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper.

## REPORT FOR 1895 (Page 10).

### GOVERNMENT AID TO CONTRACT SCHOOLS.

The Indian appropriation act for the current fiscal year contains the following provision in regard to decreasing and limiting the amount of assistance to be given by the Government to the support of schools for Indians carried on under private auspices, and known as contract schools:

> The Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June thirtieth, eighteen hundred and ninety-six, to an extent not exceeding eighty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, and the Government shall, as early as practicable, make provision for the education of Indian children in Government schools.

The question of making this 20 per cent reduction in the amount to be allowed for contract schools, amounting to $92,701, was a very serious one, as the majority of the schools were doing good work, and it was difficult to decide where the reduction should be made. I took it to be the intention of

the Department, as well as of Congress, not to deprive Indian children of schooling, but merely to provide that Indians educated at Government expense should, so far as practicable, be educated at Government schools in preference to denominational schools. Therefore it was decided not to make a uniform "horizontal" reduction everywhere, but instead, (1) To continue without modification contracts with schools at points where the Government had no schools or had very inadequate school facilities; (2) to reduce the number of pupils to be contracted for at points where the Government had already provided good school accommodations; (3) to assume all schools hitherto carried on under private auspices which should be offered to the Government for Indian school purposes; (4) to reduce per capita allowances to schools which had been receiving rates in excess of those allowed the majority of the contract schools.

April 15 last the usual circular letter was sent out by this office to Indian school contractors, asking them to submit a statement as to what provision for caring for Indian children under contract they desired the Government to make in their behalf for the current fiscal year. From replies received and subsequent correspondence it appeared that the Government could obtain control of the following schools and conduct them hereafter as Government schools—buildings and appliances being sold or rented to the Government for Indian school use:

| | *Amount of last year's contract.* |
|---|---|
| School at Wittenberg, Wis. (Lutheran) | $15,120 |
| Ramona School, Crow Reservation, Mont. (Unitarian) | 5,490 |
| School at Greenville, Cal. (Woman's National Indian Association) | 4,320 |
| Hope School, Springfield, S. Dak. (Episcopal) | 4,860 |

Also the following school desired no renewal of contract:

| | |
|---|---|
| White's Manual Labor Institute, Wabash, Ind. (Friends) | $10,020 |

In this way $39,810 of the required reduction was easily provided for. It remained, therefore, to make the rest of the reductions, to the extent of over $50,000, contrary to the wish of the contractors (in all cases) and in such a way and at such points as in the judgment of the Office would be for the best interests of the Indians. To bring this about contracts with twenty-three schools were reduced either in the number of pupils or the rate allowed per pupil; contracts with four schools were discontinued, and twenty-eight schools had their contracts renewed without change.

The equipment of the Ramona School on the Crow Reservation has been purchased and that school will be operated in the future as a Government school under the Crow agent. The schools at Wittenberg, Wis., Greenville, Cal., and Springfield, S. Dak., have been rented from their owners and converted into regular Government boarding schools.

A comparative statement of the contract schools is exhibited in the following table:

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1896.

| | 1895. | | | 1896. | | |
|---|---|---|---|---|---|---|
| *Location of school.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* |
| Baraga Mich. (Chippewa Boarding) | $108 | 45 | $4,860 | $108 | 40 | $4,320 |
| Bernalillo boarding, N. M. | 125 | 60 | 7,500 | 125 | 60 | 7,500 |
| California: | | | | | | |
| Hopland day | 30 | 20 | 600 | 30 | 20 | 600 |
| St. Turibius boarding | 108 | 30 | 3,240 | 108 | 10 | 1,080 |
| Ukiah day | 30 | 20 | 600 | 30 | 18 | 540 |
| Pinole day | 30 | 20 | 600 | 30 | 18 | 540 |
| Carried forward | | | $17,400 | | | $14,580 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1896. Rate per capita per annum. | 1896. Number allowed. | 1896. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward.. | | | $17,400 | | | $14,580 |
| Colville Agency, Wash.: | | | | | | |
| Colville Boarding.... | $108 | 65 | 7,020 | $108 | 60 | 6,480 |
| Coeur d'Alene boardg | 108 | 70 | 7,560 | 108 | 60 | 6,480 |
| Crow Creek Agy., S. Dak.: | | | | | | |
| Immaculate Conception boarding ..... | 108 | 60 | 6,480 | 108 | 50 | 5,400 |
| Grace Howard Mission boarding..... | .. | 30 | 3,000 | .. | 30 | 3,000 |
| Crow Agency, Mont.: | | | | | | |
| St. Xavier's boarding | 108 | 85 | 9,180 | 108 | 70 | 7,560 |
| Mont. Industl. boarding..... | 108 | 50 | 5,400 | .. | .. | .. |
| Devil's Lake Agy., N. Dak.: | | | | | | |
| St. Mary's boarding, Turtle Mountain .. | 108 | 130 | 14,040 | 108 | 130 | 14,040 |
| Ft. Belknap Agency, Mont.: | | | | | | |
| St. Paul's boarding.. | 108 | 135 | 14,580 | 108 | 180 | 11,880 |
| Graceville boarding, Minn..... | 108 | 50 | 5,400 | 108 | 50 | 5,400 |
| Green Bay Agency, Wis.: | | | | | | |
| St. Joseph's boarding | 108 | 130 | 14,040 | 108 | 105 | 11,340 |
| Greenville boarding, Cal. | 108 | 40 | 4,320 | .. | .. | .. |
| Halsted boarding, Kans. | 125 | 30 | 3,750 | 125 | 25 | 3,125 |
| Harbor Springs boarding, Mich..... | 108 | 95 | 10,260 | 108 | 95 | 10,260 |
| La Pointe Agency, Wis.: | | | | | | |
| Bayfield boarding ... | 125 | 30 | 3,750 | 108 | 30 | 3,240 |
| Bayfield day..... | 30 | 30 | 900 | 30 | 30 | 900 |
| St. Mary's boarding.. | 108 | 50 | 5,400 | 108 | 50 | 5,400 |
| Bad River, day..... | 30 | 40 | 1,200 | 30 | 15 | 450 |
| Lac Court d'Oreilles, day..... | 30 | 40 | 1,200 | 30 | 40 | 1,200 |
| Red Cliff day..... | 30 | 30 | 900 | 30 | 30 | 900 |
| Carried forward... | | | $135,780 | | | $111,635 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1896. Rate per capita per annum. | 1896. Number allowed. | 1896. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward.. | | | $135,780 | | | $111,635 |
| Morris boarding, Minn. | $108 | 80 | 8,640 | $108 | 65 | 7,020 |
| North Yakima boarding, Washington.. | 108 | 35 | 3,780 | 108 | 35 | 3,780 |
| Osage Agency, Okla.: | | | | | | |
| Pawhuska boarding.. | 125 | 50 | 6,250 | 108 | 50 | 6,250 |
| St. John's boarding, Hominy Creek.... | 125 | 40 | 5,000 | 125 | 14 | 5,000 |
| Pine Ridge Agency, S. Dak: | | | | | | |
| Holy Rosary boarding..... | 108 | 140 | 15,120 | 108 | 140 | 15,120 |
| Plum Creek boarding, Leslie, S. Dak..... | 108 | 15 | 1,620 | .. | .. | .. |
| Point Iroquois day, Bay Mills, Mich... | 30 | 20 | 600 | 30 | 20 | 600 |
| Pueblo Agency, N. Mex: | | | | | | |
| Acoma day..... | 30 | 25 | 750 | 30 | 25 | 750 |
| Isleta day..... | 30 | 30 | 900 | 30 | 30 | 900 |
| Laguna day..... | 30 | 25 | 750 | 30 | 25 | 750 |
| Jemez day..... | 30 | 35 | 1,050 | 30 | 35 | 1,050 |
| San Juan day..... | 30 | 22 | 660 | 30 | 22 | 660 |
| Santa Domingo day. | 30 | 25 | 750 | .. | .. | .. |
| Taos day..... | 30 | 20 | 600 | 30 | 20 | 600 |
| Rosebud Agency, S. Dak: | | | | | | |
| St. Francis boarding. | 108 | 95 | 10,260 | 108 | 95 | 10,260 |
| San Diego boarding, Cal. | 125 | 95 | 11,875 | 125 | 95 | 11,875 |
| Sac & Fox Agency, Okla: | | | | | | |
| Sacred Heart boarding..... | 108 | 40 | 4,320 | .. | .. | .. |
| St. Peter's Mission boarding, Mont.... | 108 | 180 | 19,440 | 108 | 145 | 15,660 |
| Carried forward... | | | $228,145 | | | $191,910 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1896. Rate per capita per annum. | 1896. Number allowed. | 1896. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward.. | | | $228,145 | | | $191,910 |
| Shoshone Agency, Wyo.: | | | | | | |
| St. Stephen's boarding..... | $108 | 65 | 7,020 | $108 | 52 | 5,616 |
| Episcopal Mission, boarding..... | 108 | 20 | 2,160 | 108 | 20 | 2,160 |
| Tongue River Agency, Mont: | | | | | | |
| St. Labre's boarding. | 108 | 40 | 4,320 | 108 | 40 | 4,320 |
| Tulalip Agency, Wash.: | | | | | | |
| Tulalip boarding .... | 108 | 100 | 10,800 | 108 | 95 | 10,260 |
| White Earth Agency, Minn: | | | | | | |
| St. Benedict's boarding (orphan)..... | 108 | 90 | 9,720 | 108 | 90 | 9,720 |
| Red Lake boarding.. | 108 | 40 | 4,320 | 108 | 40 | 4,320 |
| Hope Boarding, Springfield, S. Dak..... | 108 | 46 | 4,860 | .. | .. | .. |
| Wittenberg boarding, Wis..... | 108 | 140 | 15,120 | .. | .. | .. |
| Total..... | | | $286,465 | | | $228,306 |

## REPORT FOR 1896 (Page 14).

### CONTRACT SCHOOL SYSTEM.

The Indian appropriation act for the current fiscal year contains the following provision in regard to the assistance to be given by the Government to the support of schools for Indians carried on under private control, and known as contract schools:

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation

whatever for education in any sectarian school: *Provided*, That the Secretary of the Interior may make contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year eighteen hundred and ninety-seven, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding fifty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five.

The question of reducing appropriations to these schools has always been a grave and serious one, and in all cases I have endeavored to make the reductions so that they would best subserve the interests of the Indians and work the least hardship upon those whose allowances were to be lessened. As will readily be understood, this has been a difficult matter, inasmuch as reductions had to be made contrary to the wishes of the contractors. The following general principles were formulated as the best that could be devised to carry out the wishes of Congress and to interfere least with the educational facilities to be afforded Indian children:

1. In general cut down one-half the allowance to contract schools on reservations where the Government also has schools.

2. Reduce rates allowed all contract schools to $108 per pupil per annum.

3. Withdraw aid generally from contract schools off reservations, as the Government has a good supply of nonreservation schools and has to pay for transportation of pupils; moreover, nonreservation contract school plants can be utilized for white children.

4. Regard the provision of the law pertaining to division of aid among denominations by not reducing the number of pupils at the very few contract schools which are non-Catholic.

Following the above plan in general, with some variations according to circumstances, a total cut was made of 50 per cent of the amount allowed contract schools for the fiscal year 1895, excluding the two schools, Hampton and Lincoln, for which Congress made special appropriations.

The reductions are shown in detail in the following table:

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1897.

| | 1895. | | | 1897. | | |
|---|---|---|---|---|---|---|
| *Location of school.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* | *Rate per capita per annum.* | *Number allowed.* | *Amount required.* |
| Baraga, Mich. (Chippewa boarding) | $108 | 45 | $4,860 | $108 | 30 | $3,240 |
| Bernalillo boarding, N. Mex. | 125 | 60 | 7,500 | 125 | 50 | 6,250 |
| St. Boniface's boarding, Banning, Cal. | 125 | 100 | 12,500 | 125 | 75 | 9,375 |
| California: | | | | | | |
| Hopland day | 30 | 20 | 600 | 30 | 20 | 600 |
| St. Turibius boarding | 108 | 30 | 3,240 | 108 | 10 | 1,080 |
| Ukiah day | 30 | 20 | 600 | .. | .. | .. |
| Pinole day | 30 | 20 | 600 | 30 | 18 | 540 |
| Colville Agency, Wash.: | | | | | | |
| Colville boarding | 108 | 65 | 7,020 | 108 | 50 | 5,400 |
| Coeur d'Alene boarding | 108 | 70 | 7,500 | 108 | 60 | 6,480 |
| Crow Creek Agency, S. Dak: | | | | | | |
| Immaculate Conception boarding | 108 | 60 | 6,480 | 108 | 30 | 3,240 |
| Grace Howard Mission boarding | .. | 60 | 3,000 | 100 | 35 | 3,500 |
| Carried forward. | | | $53,900 | | | $39,705 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1897. Rate per capita per annum. | 1897. Number allowed. | 1897. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward | | | $53,900 | | | $39,705 |
| Crow Agency, Mont.: | | | | | | |
| St. Xavier's boarding | $108 | 85 | 9,180 | $108 | 50 | 5,400 |
| Mont. Indust. Boarding | 108 | 50 | 5,400 | .. | .. | .. |
| Devils Lake Agency, N. D: | | | | | | |
| St. Mary's boarding, Turtle Mountain | 108 | 130 | 14,040 | 108 | 100 | 10,800 |
| Ft. Belknap Agency, Mont: | | | | | | |
| St. Paul's boarding | 108 | 135 | 14,580 | 108 | 70 | 7,560 |
| Graceville boarding, Minn | 108 | 50 | 5,400 | .. | .. | .. |
| Green Bay Agency, Wis.: | | | | | | |
| St. Joseph's boarding | 108 | 130 | 14,040 | 108 | 65 | 7,020 |
| Greenville boarding, Cal | 108 | 40 | 4,320 | .. | .. | .. |
| Halstead boarding, Kans | 125 | 30 | 3,750 | .. | .. | .. |
| Harbor Springs, Mich | 108 | 95 | 10,260 | 108 | 50 | 5,400 |
| La Pointe Agency, Wis: | | | | | | |
| Bayfield boarding | 125 | 30 | 3,750 | 108 | 30 | 3,240 |
| Bayfield day | 30 | 30 | 900 | .. | .. | .. |
| St. Mary's boarding | 108 | 50 | 5,400 | 108 | 50 | 5,400 |
| Bad River day | 30 | 15 | 450 | 30 | 15 | 450 |
| Lac Court d'Oreilles day | 30 | 40 | 1,200 | 30 | 40 | 1,200 |
| Red Cliff day | 30 | 30 | 900 | .. | .. | .. |
| Morris boarding, Minn | 108 | 80 | 8,640 | .. | .. | .. |
| North Yakima boarding, Wash | 108 | 35 | 3,780 | .. | .. | .. |
| Osage Agency, Okla: | | | | | | |
| Pawhuska boarding | 125 | 50 | 6,250 | 125 | 50 | 6,250 |
| St. John's boarding, Hominy Creek | 125 | 40 | 5,000 | 125 | 40 | 5,000 |
| Carried forward | | | $171,140 | | | $97,425 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1897. Rate per capita per annum. | 1897. Number allowed. | 1897. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward | | | $171,140 | | | $97,425 |
| Pine Ridge Agency, S. Dak: | | | | | | |
| Holy Rosary boarding | $108 | 140 | 15,120 | $108 | 125 | 13,500 |
| Plum Creek boarding, Leslie, S. Dak. | 108 | 15 | 1,620 | .. | .. | .. |
| Point Iroquois day, Bay Mills, Mich | 30 | 20 | 600 | 30 | 20 | 600 |
| Pueblo Agency, N. Mex: | | | | | | |
| Acoma day | 30 | 25 | 750 | .. | .. | .. |
| Isleta day | 30 | 30 | 900 | .. | .. | .. |
| Laguna day | 30 | 25 | 750 | .. | .. | .. |
| James day | 30 | 35 | 1,050 | .. | .. | .. |
| San Juan day | 30 | 22 | 660 | .. | .. | .. |
| Santo Domingo day | 30 | 25 | 750 | .. | .. | .. |
| Taos day | 30 | 20 | 600 | .. | .. | .. |
| Rosebud Agency, S. Dak.: | | | | | | |
| St. Francis boarding | 108 | 95 | 10,260 | 108 | 90 | 9,720 |
| San Diego boarding, Cal. | 125 | 95 | 11,875 | 125 | 75 | 9,375 |
| Sac & Fox Agency, Okla: | | | | | | |
| Sacred Heart boarding | 108 | 40 | 4,320 | .. | .. | .. |
| St. Peter's boarding, Mont | 108 | 189 | 19,440 | .. | .. | .. |
| Shoshone Agency, Wyo.: | | | | | | |
| St. Stephen's boarding | 108 | 65 | 7,020 | 108 | 50 | 5,400 |
| Shoshone Mission bdg | 108 | 20 | 2,160 | 108 | 20 | 2,160 |
| Tongue River Agency, Mont.: | | | | | | |
| St. Labre's boarding | 108 | 40 | 4,320 | 108 | 40 | 4,320 |
| Tulalip Agency, Wash.: | | | | | | |
| Tulalip boarding | 108 | 100 | 10,800 | 108 | 75 | 8,100 |
| Carried forward | | | $264,135 | | | $150,600 |

| Location of school. | 1895. Rate per capita per annum. | 1895. Number allowed. | 1895. Amount required. | 1897. Rate per capita per annum. | 1897. Number allowed. | 1897. Amount required. |
|---|---|---|---|---|---|---|
| Brought forward | | | $264,135 | | | $150,600 |
| White Earth Agency, Minn.: | | | | | | |
| St. Benedict's boarding (orphan) | $108 | 90 | 9,720 | $108 | 75 | 8,100 |
| Red Lake boarding | 108 | 40 | 4,320 | 108 | 40 | 4,320 |
| Hope boarding, Springfield, S. Dak | 108 | 45 | 4,860 | .. | .. | .. |
| Wittenberg boarding, Wis. | 108 | 140 | 15,120 | .. | .. | .. |
| Blackfeet Agency, Mont.: | | | | | | |
| Holy Family boarding | 125 | 100 | 12,500 | 108 | 50 | 5,400 |
| Clontarf boarding, Minn | 150 | 100 | 15,000 | 108 | 46 | 4,968 |
| Flathead Agency, Mont., St. Ignatius boarding | 150 | 300 | 45,000 | 125 | 220 | 27,500 |
| Rensselaer boarding, Ind. | .. | 60 | 8,330 | .. | .. | .. |
| St. Benedict's boarding, St. Joseph, Minn. | 150 | 50 | 7,500 | .. | .. | .. |
| St. John's boarding, Collegeville, Minn. | 150 | 50 | 7,500 | .. | .. | .. |
| Kate Drexel Industrial boarding, Oregon | 100 | 60 | 6,000 | 100 | 36 | 3,600 |
| White's Indiana Manual Labor Inst., Wabash, Ind. | 167 | 60 | 10,020 | .. | .. | .. |
| Total | | | $410,005 | | | $204,488 |
| Hampton Institute, Va.* | 167 | 120 | 20,040 | 167 | 120 | 20,040 |
| Lincoln Institution, Philadelphia, Pa. | 167 | 200 | 33,400 | 167 | 200 | 33,400 |
| Total | | | $463,445 | | | $257,928 |

*Specially appropriated for by Congress.

Contracts have been entered into with the various schools for the amounts indicated in the above table.

## REPORT FOR 1897 (Page 12).

### CONTRACT SCHOOLS.

The system of giving governmental aid to schools carried on among the Indians by private parties goes back almost to the beginning of Indian education. In 1819 $10,000 was appropriated by Congress for Indian education, and a circular was issued by the War Department September 3, 1819, which contains the following:

> Such associations or individuals who are already actually engaged in educating the Indians, and who may desire the cooperation of the Government, will report to the Department of War. . . . In proportion to the means of the Government cooperation will be extended to such institutions as may be approved, as well in erecting their necessary buildings as in their current expenses.

In 1820 twenty-one schools carried on by different religious societies were aided by the Government to the extent of $11,838, about one-sixth of the amount expended by the societies themselves for these schools. In fact, in the earlier years there were very few schools among the Indians which were not conducted under the auspices of some religious society. It was not until 1870, when Congress made an appropriation of $100,000 "for the support of industrial and other schools among the Indian tribes not otherwise provided for," that the Government undertook with earnestness to provide Indian tribes with schools, although considerable Government money had been expended on Indian education from treaty funds and from what was known as the "civilization fund."

For a long time different schools carried on under private auspices were aided by the Government without any formal contract. Formal contracts began to be made in the latter part of 1870. At one time they were made largely on account of a law limiting the amount which might be expended at an Indian agency for employees. Unless school employees could be excepted from this restriction it was found that it would be impracticable to keep up both school and agency work at the larger agencies. By contracting with a society to carry on a school the employees of that school were thereby eliminated from the list of agency employees. Afterwards the law was amended so as to exclude school employees and there was no longer any occasion on that score for making school contracts. Sometimes when no contract was necessary and Government aid could just as well be extended to the school without one, and perhaps had been so extended for years, it came to be considered more desirable by the office or by the society to put the terms of the agreement between them into the form of a contract. It also facilitated in some respects the settlement of accounts in the Treasury.

For a while, when other schools were carried on under contract, "schools specially appropriated for" were considered as not needing any contract arrangement in their behalf. But finally it became the custom to render through the medium of a contract all Government aid to Indian schools carried on by private parties. Hence schools so aided became known as contract schools; and thus there grew up "the contract system," which gradually increased until, during the fiscal year ended June 30, 1892, contracts were made with various denominations and individuals to the amount of $611,570. Since that year there has been a gradual reduction, either by withdrawal of the parties themselves from contracts or by action of this office under the direction of Congress.

There were in operation last year thirty-seven contract schools (two of them receiving special appropriations), for

which $257,928 was allowed. The Indian appropriation act for the current fiscal year contains the following provision in regard to the assistance to be given by the Government in the support of the schools for Indians carried on under private control:

> And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school: Provided, That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year eighteen hundred and ninety-eight, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding forty per centum of the amount so used for the fiscal year eighteen hundred and ninety-five.

For the fiscal year 1895 there was used for all contract schools the sum of $463,505, of which amount $53,440 was appropriated for two schools specifically named by Congress, which left a total of $410,065 as the true amount from which the 40 per cent. should be taken. This included the amount allowed for two schools on the Osage Reservation, $11,250, which was paid out of Osage trust money. In the opinion of this office, concurred in by the Department, this sum should not have been included in the amount set apart for contract schools, since it had been paid from and charged against the special treaty funds of the Osages. This sum deducted from the above total left a new one for 1895 of $398,815, of which 40 per cent. under the above section of the appropriation act could be used for the fiscal year 1898, making the sum of $159,526 available for sectarian schools. There are only two Protestant contract schools, Bay Mills in Michigan, $600, and John Roberts, Shoshone Agency, Wyo., $2,160, a total

of $2,760, which deducted from the $159,526 leaves $156,766 as the amount available for distribution among Catholic schools for the fiscal year 1898.

In the fiscal year 1897 certain schools were allowed $125 per capita. At all of these schools the rates for the current fiscal year have been reduced to $108 per capita, and the Catholic mission school on the Crow Creek Reservation has been omitted because the Government has ample accommodations for all pupils of school age on that reservation.

For the current fiscal year contracts have been made with the different schools for the number of pupils and at the rate given in the table below. It has been deemed best to reduce the various schools each a small amount rather than to cut out any other school than the Crow Creek school. Regarding the provision of law pertaining to apportioning aid among the various denominations, no reductions were made in the Bay Mills or the John Roberts school.

TABLE 8.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1898.

| | 1895. | | | 1898. | | |
|---|---|---|---|---|---|---|
| *Name and location of school.* | *Number allowed.* | *Rate.* | *Amount.* | *Number allowed.* | *Rate.* | *Amount.* |
| Banning, California | 100 | $125 | $12,500 | 70 | $108 | $7,560 |
| Baraga, Michigan | 45 | 108 | 4,860 | 25 | 108 | 2,700 |
| Blackfeet, Mont. | 100 | 125 | 12,500 | 45 | 108 | 4,860 |
| Bayfield, Wisconsin | 30 | 125 | 3,750 | 25 | 108 | 2,700 |
| Bernalillo, N. Mexico | 60 | 125 | 7,500 | 45 | 108 | 4,860 |
| Colville, Wash. | 65 | 108 | 7,020 | 45 | 108 | 4,860 |
| Coeur d'Alene, Idaho | 70 | 108 | 7,560 | 55 | 108 | 5,940 |
| Crow Creek, S. Dak. | 60 | 108 | 6,480 | .. | .. | .. |
| Crow, Montana | 85 | 108 | 9,180 | 45 | 108 | 4,860 |
| Devils Lake, N. Dak. | 130 | 108 | 14,040 | 95 | 108 | 10,260 |
| Flathead, Montana | 300 | 150 | 45,000 | 215 | 108 | 23,220 |
| Carried forward | | | $130,390 | | | $71,820 |

| Name and location of school. | 1893. Number allowed. | Rate. | Amount. | 1898. Number allowed. | Rate. | Amount. |
|---|---|---|---|---|---|---|
| Brought forward | | | $130,390 | | | $71,820 |
| Fort Belknap, Montana | 135 | $108 | 14,580 | 65 | $108 | 7,020 |
| Harbor Springs, Mich | 95 | 108 | 10,260 | 45 | 108 | 4,860 |
| Odanah, Wis., boarding | 50 | 108 | 5,400 | 45 | 108 | 4,860 |
| Odanah, Wis., day | 15 | 30 | 450 | 10 | 30 | 300 |
| Lac Court d'Oreilles Wisconsin, day | 40 | 30 | 1,200 | 33 | 30 | 990 |
| Osage, Okla., St. Louis | 50 | 125 | 6,250 | .. | .. | .. |
| Osage, Okla., St. John's | 40 | 125 | 5,000 | .. | .. | .. |
| Pine Ridge, S. Dak. | 140 | 108 | 15,120 | 115 | 108 | 12,420 |
| Rosebud, S. Dak. | 95 | 108 | 10,260 | 81 | 108 | 8,748 |
| San Diego, Calif. | 95 | 125 | 11,875 | 67 | 108 | 7,236 |
| Shoshone, Wyom. | 65 | 108 | 7,020 | 45 | 108 | 4,860 |
| Tongue River, Mont. | 40 | 108 | 4,320 | 35 | 108 | 3,780 |
| Tulalip, Wash. | 100 | 108 | 10,800 | 67 | 108 | 7,236 |
| White Earth, Minn., St. Benedict | 90 | 108 | 9,720 | 70 | 108 | 7,560 |
| White Earth, Minn., Red Lake | 40 | 108 | 4,320 | 35 | 108 | 3,780 |
| Pinola Day, Calif. | 20 | 30 | 600 | 13 | 30 | 390 |
| Hopland Day, Calif. | 20 | 30 | 600 | 15 | 30 | 450 |
| St. Turibius, Calif. | 30 | 108 | 3,240 | 8 | 108 | 864 |
| Green Bay, Wisconsin | 130 | 108 | 14,040 | 60 | 108 | 6,480 |
| Kate Drexel, Oregon | 60 | 100 | 6,000 | 31 | 100 | 3,100 |
| Point Iroquois Day, Michigan | 20 | 30 | 600 | 20 | 30 | 600 |
| Shoshone Mission, Wyoing | 20 | 108 | 2,160 | 20 | 108 | 2,160 |
| Total | 2,435 | | $274,205 | 1,545 | | $159,514 |
| Hampton Institute, Virginia* | 120 | 167 | 20,040 | 120 | 167 | 20,040 |
| Lincoln Institution, Philadelphia* | 200 | 167 | 33,400 | 200 | 167 | 33,400 |
| Grand Total | 2,755 | | $327,645 | 1,865 | | $212,954 |

*Specially appropriated by Congress.

It will appear from the above table that contracts are now made with thirty-two schools. There was during the fiscal year 1897 an enrollment of 3,158, and an average attendance of 2,785 pupils, a decrease, respectively, of 1,281 and 1,012 from the preceding year.

## REPORT FOR 1898 (Page 15).

### CONTRACT SCHOOLS.

It is provided in the appropriation act for the fiscal year ending June 30, 1899—

> that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among the schools of various denominations, for the education of Indian pupils during the fiscal year 1899, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children to an amount not exceeding 30 per cent. of the amount so used for the fiscal year 1895.

For the fiscal year 1895 there was used for contract schools of all denominations the sum of $463,505, of which amount $53,440 was appropriated for schools specifically named by Congress, which leaves a total of $410,065 as the true amount from which the 30 per cent. should be taken. The amount allowed for the two schools at the Osage Reservation ($11,250), being paid out of Osage trust money, should not, in the opinion of this office, be included in the amount set apart for contract schools, and therefore, upon your approval, that sum has been deducted from the above total, which would leave a new total for 1895 of $298,815, of which sum I am of opinion Congress intended only 30 per cent. to be used for 1899, thus making the sum of $119,644.50 available for such purpose.

When the schedule for the fiscal year 1898 was prepared, there were two Protestant schools—the Bay Mills, Mich.,

$600, and the John Roberts, Shoshone Agency, Wyo., $2,160, a total of $2,760. However, during the past year the school at Bay Mills, Mich., has been discontinued, and no contract was made therefor, which leaves only one Protestant contract school in existence. In order to arrive at the amount which, in the judgment of this office, should be set aside to the Catholic contract schools, I deducted the $2,760 from the total amount of $119,644.50, which leaves $116,884.50 for distribution to the various Catholic schools.

It will appear from an inspection of the schedule that the schools have been reduced ratably, rather than to eliminate any particular institution. The reason for this is that the average attendance at nearly all of such schools shows an excess over that contracted for, the number allowed being 1,763 pupils, while the average attendance during the past year was 2,313, indicating that, although reductions have been made in the number allowed, the schools have continued in their particular work.

Contracts have been executed with the different schools for the number of pupils and at the rate and for the amount given in the schedule as follows:

TABLE 7.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1899.

| | 1895. | | | 1899. | | |
|---|---|---|---|---|---|---|
| *Name and location of school.* | *Number allowed.* | *Rate.* | *Amount.* | *Number allowed.* | *Rate.* | *Amount.* |
| Banning, California.. | 100 | $125 | $12,500 | 52 | $108 | $5,616 |
| Baraga, Mich ..... | 45 | 108 | 4,860 | 19 | 108 | 2,052 |
| Blackfeet, Montana.. | 100 | 125 | 12,500 | 34 | 108 | 3,672 |
| Bayfield, Wisconsin . | 30 | 125 | 3,750 | 19 | 108 | 2,052 |
| Bernalillo, N. Mex. .. | 60 | 125 | 7,500 | 34 | 108 | 3,672 |
| Colville, Wash..... | 65 | 108 | 7,020 | 34 | 108 | 3,672 |
| Carried forward. | | | $48,130 | | | $20,736 |

| *Name and location of school.* | 1895. *Number allowed.* | 1895. *Rate.* | 1895. *Amount.* | 1899. *Number allowed.* | 1899. *Rate.* | 1899. *Amount.* |
|---|---|---|---|---|---|---|
| Brought forward | | | $48,130 | | | $20,736 |
| Coeur d'Alene, Idaho | 70 | $108 | 7,560 | 41 | $108 | 4,428 |
| Crow Creek, So. Dak. | 60 | 108 | 6,480 | .. | .. | .. |
| Crow, Montana..... | 85 | 108 | 9,180 | 34 | 108 | 3,672 |
| Devils Lake, N Dak.. | 130 | 108 | 14,040 | 72 | 108 | 7,776 |
| Flathead, Montana .. | 300 | 150 | 45,000 | 161 | 108 | 17,388 |
| Fort Belknap, Mont.. | 135 | 108 | 14,580 | 49 | 108 | 5,292 |
| Harbor Springs, Mich | 95 | 108 | 10,260 | 34 | 108 | 3,672 |
| Odanah, Wis., boardg. | 30 | 108 | 5,400 | 34 | 108 | 3,672 |
| Odanah, Wis., day.. | 15 | 30 | 450 | .. | .. | .. |
| Lac Court d'Oreilles, Wisconsin, day . | 40 | 30 | 1,200 | .. | .. | .. |
| Osage, Okla., St. Louis | 50 | 125 | 6,250 | .. | .. | .. |
| Osage, Okla., St. John's..... | 40 | 125 | 5,000 | .. | .. | .. |
| Pine Ridge, S. Dak... | 140 | 108 | 15,120 | 86 | 108 | 9,288 |
| Rosebud, S. Dak..... | 95 | 108 | 10,260 | 61 | 108 | 6,588 |
| San Diego, Cal..... | 95 | 108 | 11,875 | 51 | 108 | 5,508 |
| Shoshone, Wyoming. | 65 | 108 | 7,020 | 34 | 108 | 3,672 |
| Tongue River, Mont. | 40 | 108 | 4,320 | 26 | 108 | 2,808 |
| Tulalip, Wash..... | 100 | 108 | 10,800 | 50 | 108 | 5,400 |
| White Earth, Minn., St. Benedict .... | 90 | 108 | 9,720 | 51 | 108 | 5,508 |
| White Earth, Minn., Red Lake ..... | 40 | 108 | 4,320 | 27 | 108 | 2,916 |
| Pinole, Calif..... | 20 | 30 | 600 | 10 | 30 | 300 |
| Hopland, day, Cal. .. | 20 | 30 | 600 | 11 | 30 | 330 |
| St. Turibius, Cal..... | 30 | 108 | 3,240 | 6 | 108 | 648 |
| Green Bay, Wis. .... | 130 | 108 | 14,040 | 45 | 108 | 4,860 |
| Kate Drexel, Oregon. | 60 | 108 | 6,000 | 24 | 100 | 2,400 |
| Bay Mills, Mich..... | 20 | 30 | 600 | .. | .. | .. |
| Shoshone Mission, Wyoming ..... | 20 | 108 | 2,160 | 20 | 108 | 2,160 |
| Total..... | 2,435 | | $274,205 | 1,119 | | $119,022 |
| Carried forward. | | | $274,205 | | | $119,022 |

| Name and location of school. | 1895. Number allowed. | Rate. | Amount. | 1899. Number allowed. | Rate. | Amount. |
|---|---|---|---|---|---|---|
| Brought forward | | | $274,205 | | | $119,022 |
| Hampton Institute, Virginia*..... | 120 | $167 | 20,040 | 120 | $167 | 20,040 |
| Lincoln Institution, Philadelphia*... | 200 | 167 | 33,400 | 200 | 167 | 33,400 |
| Grand total† ... | 2,755 | | $327,645 | 1,439 | | $162,462 |

For the reasons set forth in my last annual report, a contract with the St. Louis Boarding School, on the Osage Reservation, for 75 pupils at $125 per capita, amounting to $9,375, and also a contract with the St. John's Boarding School, on the same reservation, for 65 pupils at $125 per capita, amounting to $8,125—a total of $17,500—were executed, and payable out of the Osage trust funds.

During the past fiscal year contracts, payable out of the educational fund of the Pottawatomies, have been made with the Sacred Heart Boys' School and the St. Mary's Academy for girls, on the Sac and Fox Reservation, Okla., for 35 boys and 52 girls, respectively, at $144 each per capita per annum. As this fund is nearly exhausted, I have, with your approval, renewed the contract only with St. Mary's Academy for 45 pupils at $125 per capita, which will amount to $5,625. The determination, therefore, of this contract will absorb all of the available portion of this fund. As only one school can be maintained, I have deemed it best that all the money should be used for the benefit of the girls.

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* Specially appropriated for by Congress.

† Not including the two schools of Osage and two Pottawatomie schools at Sac and Fox Agencies, Ia., nor one day school at La Pointe Agency, which was converted into a Government school during the year.

## REPORT FOR 1899 (Page 16).

### CONTRACT SCHOOLS.

The Indian appropriation act for the fiscal year ended June 30, 1899, contains this provision:

> That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year nineteen hundred, but shall only make such contracts at places where nonsectarian schools can not be provided for such Indian children, and to an amount not exceeding fifteen per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said contract schools, this being the final appropriation for sectarian schools.

The sum of $463,505 was the amount used for contract schools of all denominations for the fiscal year 1895, of which amount $53,440 were appropriated for Hampton and Lincoln institutions specifically by Congress, which left a total of $410,065 as the true amount from which the 15 per centum should be taken. There were two schools, however, at the Osage Reservation paid out of Osage trust money, and the amount so used for these schools has been deducted from the above total, which leaves a new total for 1895 of $398,815, of which sum it is proposed to use during the fiscal year 1900 15 per centum, making the sum of $59,822.25 available for such purposes. This amount has been divided as follows: For the only Protestant schools now under contract $2,160, leaving amount for the Catholic schools of $57,642.

In view of the fact that the average attendance at these schools was in excess of the contract number, it was deemed best to reduce them ratably rather than to eliminate any par-

ticular institution. They have carried 2,188 pupils on the contract number of 749 for which they are paid by the Government.

The following table gives a list of the contracts executed with the different schools for the number of pupils at the rate and amount allowed:

TABLE NO. 6.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1900.

| *Name and location of school.* | 1895. | | | 1900. | | |
|---|---|---|---|---|---|---|
| | *Number allowed.* | *Rate.* | *Amount.* | *Number allowed.* | *Rate.* | *Amount.* |
| Banning, California.. | 100 | $125 | $12,500 | 26 | $108 | $2,808 |
| Baraga, Michigan.... | 45 | 108 | 4,860 | 10 | 108 | 1,080 |
| Blackfeet, Montana. | 100 | 125 | 12,500 | 17 | 108 | 1,836 |
| Bayfield, Wisconsin . | 30 | 125 | 3,750 | 10 | 108 | 1,080 |
| Barnalillo, N. Mex... | 60 | 125 | 7,500 | 17 | 108 | 1,836 |
| Colville, Wash..... | 65 | 108 | 7,020 | 17 | 108 | 1,836 |
| Coeur d'Alene, Idaho | 70 | 108 | 7,560 | 20 | 108 | 2,160 |
| Crow Creek, S. Dak. . | 60 | 108 | 6,480 | .. | .. | .. |
| Crow, Montana..... | 85 | 108 | 9,180 | 17 | 108 | 1,836 |
| Devils Lake, N. Dak. | 130 | 108 | 14,040 | 35 | 108 | 3,780 |
| Flathead, Montana .. | 300 | 150 | 45,000 | 80 | 108 | 8,640 |
| Fort Belknap, Mont.. | 135 | 108 | 14,580 | 24 | 108 | 2,592 |
| Harbor Springs, Mich | 95 | 108 | 10,260 | 17 | 108 | 1,836 |
| Odanah, Wis., boardg. | 50 | 108 | 5,400 | 17 | 108 | 1,836 |
| Odanah, Wis., day... | 15 | 30 | 450 | .. | .. | .. |
| Lac Court d'Oreilles, Wisconsin, day.. | 40 | 30 | 1,200 | .. | .. | .. |
| Osage, Okla., St. Louis..... | 50 | 125 | 6,250 | .. | .. | .. |
| Osage, Okla., St. John's..... | 40 | 125 | 5,000 | .. | .. | .. |
| Carried forward. | | | $173,530 | | | $33,156 |

| Name and location of school. | 1895. Number allowed. | 1895. Rate. | 1895. Amount. | 1900. Number allowed. | 1900. Rate. | 1900. Amount. |
|---|---|---|---|---|---|---|
| Brought forward | | | $173,530 | | | $33,156 |
| Pine Ridge, So. Dak.. | 140 | $108 | 15,120 | 40 | $108 | 4,320 |
| Rosebud, So. Dak ... | 95 | 108 | 10,200 | 30 | 108 | 3,240 |
| Dan Diego, Calif..... | 95 | 125 | 11,875 | 25 | 108 | 2,700 |
| Shoshone, Wyoming. | 65 | 108 | 7,020 | 17 | 108 | 1,836 |
| Tongue River, Mont.. | 40 | 108 | 4,320 | 13 | 108 | 1,404 |
| Tulalip, Washington. | 100 | 108 | 10,800 | 24 | 108 | 2,592 |
| White Earth, Minn., St. Benedict's... | 90 | 108 | 9,720 | 24 | 108 | 2,592 |
| White Earth, Minn., Red Lake ..... | 40 | 108 | 4,320 | 13 | 108 | 1,404 |
| Pinole, Calif..... | 20 | 30 | 600 | 6 | 30 | 180 |
| Hopland, Calif., day. | 20 | 30 | 600 | 7 | 30 | 210 |
| St. Turibius, Calif. .. | 30 | 108 | 3,240 | 5 | 108 | 540 |
| Green Bay, Wis..... | 130 | 108 | 14,040 | 21 | 108 | 2,268 |
| Kate Drexel, Oregon. | 60 | 100 | 6,000 | 1 | 100 | 1,200 |
| Bay Mills, Michigan | 20 | 30 | 600 | .. | .. | .. |
| Shoshone Mission, Wyoming,..... | 20 | 108 | 2,160 | 20 | 108 | 2,160 |
| Total..... | 2,435 | | $274,145 | 564 | | $59,802 |
| Hampton Institute, Virginia*..... | 120 | 167 | 20,040 | 120 | 167 | 20,040 |
| Lincoln Institute, Philadelphia,*.. | 200 | 167 | 33,400 | 200 | 167 | 33,400 |
| Grand Total†... | 2,755 | | $327,585 | 884 | | $113,242 |

In the above schedule schools are not included that were dropped from the contract list since 1895, amounting to the sum of $135,860, the difference between totals in "Amount" columns of tables Nos. 6 and 8.

* Specially appropriated for by Congress.

† Not including the two schools of Osage and one Pottawatomie school at Sac and Fox Agency, Oklahoma.

For the reasons set forth in the Annual Report for 1897 a contract with the St. Louis boarding school, on the Osage Reservation, for 75 pupils at $125 per capita, amounting to $9,375, and also a contract with the St. John's boarding school, on the same reservation, for 65 pupils at $125 per capita, amounting to $8,125—a total of $17,500—were executed, and payable out of the Osage trust funds. It appearing that after paying all demands against the educational fund of the Pottawatomies for the present year there remained a surplus which could be utilized, therefore a contract has been executed with the St. Mary's Academy for girls, on the Pottawatomie Reservation, Okla., for 27 pupils at $125 per annum per capita, amounting to $3,375. This will practically exhaust this fund.

## REPORT FOR 1900 (Page 23).

### CONTRACT SCHOOLS.

The following section of the act making appropriations for the Indian service for the fiscal year ending June 30, 1900, provided:—

> That the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations, for the education of Indian pupils during the fiscal year nineteen hundred, but shall only make such contracts at places where nonsectarian schools cannot be provided for Indian children, and to an amount not exceeding fifteen per centum of the amount so used for the fiscal year eighteen hundred and ninety-five, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools—

Under this section contracts were made with the several contract schools in accordance with the following schedule:

TABLE NO. 12.—SCHOOLS CONDUCTED UNDER CONTRACT, WITH NUMBER OF PUPILS CONTRACTED FOR, RATE PER CAPITA, AND TOTAL AMOUNT OF CONTRACT FOR FISCAL YEARS ENDING JUNE 30, 1895, AND JUNE 30, 1900.

| *Name and location of school.* | 1895. | | | 1900. | | |
|---|---|---|---|---|---|---|
| | *Number.* | *Rate.* | *Amount.* | *Number.* | *Rate.* | *Amount.* |
| Banning, Cal..... | 100 | $125 | $12,500 | 26 | $108 | $2,808 |
| Baraga, Michigan.... | 45 | 108 | 4,860 | 10 | 108 | 1,080 |
| Blackfeet, Montana.. | 100 | 125 | 12,500 | 17 | 108 | 1,836 |
| Bayfield, Wis..... | 30 | 125 | 3,750 | 10 | 108 | 1,080 |
| Bernalillo, N. Mex... | 60 | 125 | 7,500 | 17 | 108 | 1,836 |
| Colville, Wash..... | 65 | 108 | 7,020 | 17 | 108 | 1,836 |
| Coeur d'Alene, Idaho | 70 | 108 | 7,560 | 20 | 108 | 2,160 |
| Crow, Montana..... | 85 | 108 | 9,180 | 17 | 108 | 1,836 |
| Devils Lake, N. Dak. | 130 | 108 | 14,040 | 35 | 108 | 3,780 |
| Flathead, Montana .. | 300 | 150 | 45,000 | 80 | 108 | 8,640 |
| Fort Belknap, Mont.. | 135 | 108 | 14,580 | 24 | 108 | 2,592 |
| Harbor Springs, Mich | 95 | 108 | 10,260 | 17 | 108 | 1,836 |
| Odanah, Wis., boardg. | 50 | 108 | 5,400 | 17 | 108 | 1,836 |
| Pine Ridge, S. Dak... | 140 | 108 | 15,120 | 40 | 108 | 4,320 |
| Rosebud, S. Dak..... | 95 | 108 | 10,260 | 30 | 108 | 3,240 |
| San Diego, Cal..... | 95 | 125 | 11,875 | 25 | 108 | 2,700 |
| Shoshoni, Wyom..... | 65 | 108 | 7,020 | 17 | 108 | 1,836 |
| Tongue River, Mont. | 40 | 108 | 7,020 | 17 | 108 | 1,404 |
| Tulalip, Wash..... | 100 | 108 | 10,800 | 24 | 108 | 2,592 |
| White Earth, Minn., St. Benedict's... | 90 | 108 | 9,720 | 24 | 108 | 2,392 |
| White Earth, Minn., Red Lake..... | 40 | 108 | 4,320 | 13 | 108 | 1,404 |
| Pinole, Cal..... | 20 | 30 | 600 | 6 | 30 | 180 |
| Hopland, Cal., day.. | 20 | 30 | 500 | 7 | 30 | 210 |
| St. Turibius, Cal..... | 30 | 108 | 3,240 | 5 | 108 | 540 |
| Green Bay, Wis..... | 130 | 108 | 14,040 | 21 | 108 | 2,268 |
| Kate Drexel, Oregon. | 60 | 100 | 6,000 | 12 | 100 | 1,200 |
| Carried forward. | | | $254,665 | | | $57,442 |

| *Name and location of school.* | 1895. *Number.* | *Rate.* | *Amount.* | 1900. *Number.* | *Rate.* | *Amount.* |
|---|---|---|---|---|---|---|
| Brought forward | | | $254,665 | | | $57,442 |
| Shoshoni, Mission, Wyoming | 20 | $108 | 2,160 | 20 | $108 | 2,160 |
| Schools dropped from contract lists since 1895 | .. | .. | 155,840 | .. | .. | .. |
| Total | 2,435 | | $412,665 | 2,564 | | $59,502 |
| Hampton Inst. Va.* | 120 | 167 | 20,040 | 150 | 167 | 20,040 |
| Lincoln Institution, Phila., Pa.* | 200 | 167 | 33,400 | 200 | 167 | 33,400 |
| Grand total† | 2,755 | | $466,105 | 884 | | $112,942 |

For the reasons set forth in the Annual Report of this office for 1897, contracts, payable out of the Osage trust funds, were made with St. Louis boarding school for 75 pupils, at $125 per capita, amounting to $9,375, and with St. John's boarding school for 65 pupils, at $125 per capita, amounting to $8,125, a total of $17,500 for these schools located on the Osage Reservation, Okla. A contract was also entered into with St. Mary's Academy for girls, on the Sauk and Fox reservation, Okla., for 27 pupils, at $125 per capita, amounting to $3,375. This amount was payable out of the educational funds of the Potawatomi and, as was stated in the last annual report, exhausts that fund.

* * * * * * * * * * * * * * * * * * *

The history of governmental aid to schools conducted by other parties goes back to the beginning of the present cen-

* Specially appropriated by Congress.

† Not including the two schools of Osage and one school at Sac and Fox Agency

tury. Under the provisions of the act of 1819 $10,000 were appropriated for the purpose of extending financial help to "such associations or individuals who are already engaged in educating the Indians" as may be approved by the War Department. In 1820 twenty-one schools conducted by different religious societies were given $11,838, and from that date until the appropriation of $100,000 in 1870 the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. The contract system was a natural sequence of the efforts to systemize this work and harmonize it under existing laws and regulations.

The growth of the system has been gradual since its inception and reached the maximum amount during the fiscal year ended June 30, 1892, when the contracts amounted to $611,570, more than one-fourth of the amount appropriated for regular Government schools. Since that time nearly all religious bodies have discontinued the acceptance of governmental aid. These discontinuances were either voluntary or by action of the Indian department under various Congressional requirements. About this time the agitation of the contract or sectarian school question was begun, and deferring to the sentiment that religious bodies should discontinue the use of Government funds in their educational work among the Indians, steps were taken for a gradual reduction in the amounts to be allowed. There were doubtless equities involved in the matter, and it was thought that as much hardship as possible should be avoided in the final abandonment of this plan.

* * * * * * * * * * * * * * * * * * * *

In the act making appropriations for the ensuing fiscal year 1901 no authority is given to make these contracts. Only one exception is made, and that is a specific appropriation "For support and education of one hundred and twenty Indian pupils at the school at Hampton, Virginia." This

is a magnificently equipped industrial school, and for this and the additional reason that it is not considered a sectarian school, it is presumed that Congress continued its appropriation.

* * * * * * * * * * * * * * * * * * * *

MISSION SCHOOLS.

Mission schools are a growing class of schools whose work is of great benefit not only to the children but to the adult Indians. They are operated and conducted by various religious bodies, both Protestant and Catholic, and also by philanthropic associations. Teachers, employees, food, clothing, and buildings are provided by the conductors of these schools. The Government only assuming supervisory care over them, they are visited by inspecting officials of this office and the Department for the purpose of observing the care and attention bestowed upon the pupils, their progress, health, and general condition. Agents and other Government officials are directed to "lend a helping hand," and assist the missionary efforts of the employees in securing a legitimate attendance. On those reservations where food and clothing are issued to the adult Indians, the agent furnishes such proportion of the rations and clothing to the school as he would give to the parents were the children at home. When no rations are issued, or the school is not on the Indian reservation, the entire expense of maintaining the school is borne by the association or church under whose control it is conducted.

Connected with many of these schools are small mission churches, which have a wide influence for good on the community. Children in the Government schools are advised and urged to attend the church of their choice.

## REPORT FOR 1901 (Page 26).

### MISSION SCHOOLS.

These institutions are maintained on or near Indian reservations by the different religious bodies and missionary associations of the United States. They are owned and controlled by their conductors, the Government merely exercising supervisory direction to see that Indian pupils enrolled there are properly educated and cared for. They are valuable assistants in the general scheme of Indian civilization. As a rule they are sectarian in their teachings, and are conducted in conjunction with mission churches. The Department readily assists these schools in every way possible. At those reservations where rations are issued, the agents were permitted to give those to which the child would be entitled if at home with its parents, to the school at which the child was enrolled, deducting the same from the amount issued the parents. This permission has been revoked as unlawful.

Congress having failed to provide in the appropriation act for the fiscal year 1901 for the continuance of the contract-school system, those schools did not receive Government aid during the year. All were continued, however, as mission schools, and therefore are now classed (except Hampton Institute, for which Congress made a specific appropriation) under the general head of "mission schools." With this explanation the decrease in the contract schools, as shown in table No. 8, page [illegible] is readily understood.

There were enrolled in the mission boarding schools 3,531 pupils, with an average attendance of 3,120; day-school enrollment 272, average attendance 205; making, respectively, increases, at the boarding schools of 2,469 enrolled, 2,174 in attendance, and at day schools 59 enrolled and 12 in average attendance. It is believed that the enrollment in these schools is greater than stated above, for the reason that there is a disinclination on the part of some of the mission schools to furnish statistics promptly and regularly.

The location, denomination, and other information relative to mission schools will be found in the following table:

TABLE NO. 7.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1901.

BOARDING SCHOOLS.

| *Location of school.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| ARIZONA. | | | | |
| Tucson | Presbyterian Church | 170 | 168 | 158 |
| CALIFORNIA. | | | | |
| Banning | Catholic Church | 150 | 139 | 125 |
| San Diego | " " | 150 | 82 | 81 |
| Kelseyville (St. Turibius) | Catholic Church | 20 | 13 | 10 |
| IDAHO. | | | | |
| Coeur d'Alene Reservation: | | | | |
| De Smet Mission | Catholic Church | 150 | 93 | 83 |
| MICHIGAN. | | | | |
| Baraga | Catholic Church | 140 | 27 | 24 |
| Harbor Springs | " " | 126 | 85 | 82 |
| MINNESOTA. | | | | |
| White Earth Agency: | | | | |
| St. Benedict's | Catholic Church | 150 | 95 | 88 |
| Leech Lake Agency: | | | | |
| Red Lake Reservation, St. Mary's | Catholic Church | 100 | 76 | 65 |
| Carried forward. | | 1156 | 778 | 716 |

BOARDING SCHOOLS—(*Continued*).

| *Location of school.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 1156 | 778 | 716 |
| MONTANA. | | | | |
| Blackfeet | Catholic Church | 150 | 78 | 69 |
| Crow | " " | 150 | 56 | 50 |
| Flathead | " " | 250 | 105 | 143 |
| Fort Belknap | " " | 250 | 105 | 82 |
| Fort Peck Agency, Wolf Point | Presbyterian Church | 30 | 29 | 22 |
| Tongue River | Catholic Church | 65 | 66 | 53 |
| NEBRASKA. | | | | |
| Santee Agency: | | | | |
| Santee Normal (training) | Congregational Ch. | 125 | 98 | 81 |
| NEW MEXICO. | | | | |
| Bernalillo | Catholic Church | 125 | 79 | 73 |
| NORTH DAKOTA. | | | | |
| Fort Berthold Agency: | | | | |
| Mission Home | Congregational Ch. | 46 | 34 | 28 |
| Devils Lake Agency: | | | | |
| St. Mary's (Turtle Mountain) | Catholic Church | 150 | 141 | 110 |
| Standing Rock Agency: | | | | |
| St. Elizabeth's | Episcopal Church | 60 | 66 | 58 |
| OKLAHOMA. | | | | |
| Cheyenne and Arapaho Agency: | | | | |
| Cantonment | Mennonite Church | 60 | 29 | 26 |
| Kiowa Agency: | | | | |
| St. Patrick's | Catholic Church | 125 | 85 | 77 |
| Mary Gregory Memorial | Presbyterian Church | 60 | 30 | 22 |
| Carried forward | | 2802 | 1779 | 1610 |

BOARDING SCHOOLS—(*Continued*).

| *Location of school.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 2802 | 1779 | 1610 |
| OKLAHOMA (*Continued*) | | | | |
| Cache Creek | Reform Presbyterian Church | 50 | 51 | 48 |
| Methvin | Methodist Ch. South | 100 | 74 | 64 |
| Osage Agency: St. Louis | Catholic Church | 125 | 68 | 65 |
| St. John's | " " | 150 | 46 | 44 |
| Sac and Fox Agency: Sacred Heart, St. Mary's Academy | Catholic Church | 54 | 49 | 35 |
| Sacred Heart, St. Benedict's | Catholic Church | 40 | 27 | 22 |
| OREGON. | | | | |
| Umatilla Agency: Kate Drexel's | Catholic Church | 130 | 69 | 54 |
| SOUTH DAKOTA. | | | | |
| Crow Creek | Catholic Church | 75 | 58 | 54 |
| Cheyenne River Agency: St. John's | Episcopal Church | 60 | 60 | 54 |
| Plum Creek | Society for Propagation of the Gospel. | 10 | 10 | 9 |
| Oahe | Congregational Ch. | 50 | 32 | 30 |
| Pine Ridge | Catholic Church | 160 | 156 | 149 |
| Rosebud Agency: St. Francis | Catholic Church | 230 | 213 | 206 |
| St. Mary's | Episcopal Church | 50 | 55 | 50 |
| Goodwill Mission | Presbyterian Ch. | 100 | 66 | 54 |
| Yankton Agency: St. Paul's | Episcopal Church | 50 | 49 | 43 |
| Carried forward | | 4236 | 2862 | 2591 |

BOARDING SCHOOLS—(*Continued*).

| *Location of school.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 4236 | 2862 | 2591 |
| WASHINGTON. | | | | |
| Colville Mission | Catholic Church | 150 | 66 | 56 |
| Puyallup Reservation: | | | | |
| St. George's | Catholic Church | 90 | 85 | 64 |
| Tulalip | " " | 150 | 93 | 80 |
| WISCONSIN. | | | | |
| Green Bay | Catholic Church | 170 | 153 | 125 |
| La Pointe Agency: Bayfield | Catholic Church | 50 | 32 | 31 |
| Odanah, St. Mary's | " " | 80 | 85 | 81 |
| WYOMING. | | | | |
| Shoshoni Agency: | | | | |
| St. Stephen's | Catholic Church | 125 | 76 | 68 |
| Shoshoni Mission | Episcopal Church | 20 | 21 | 14 |
| Total | | 5071 | 3473 | 3110 |

DAY SCHOOLS

| | | | | |
|---|---|---|---|---|
| ARIZONA. | | | | |
| Pima Agency: | | | | |
| San Xavier | Catholic Church | 125 | 100 | 84 |
| St. John's Mission | " " | 100 | 83 | 53 |
| CALIFORNIA. | | | | |
| Pinole | Catholic Church | 40 | 16 | 12 |
| Ukiah | " " | 30 | 11 | 8 |
| Kelseyville (St. Turibius)* | Catholic Church | .. | 7 | 5 |
| Carried forward | | 295 | 217 | 162 |

* Attend St. Turibius Boarding School.

DAY SCHOOLS—(*Continued*).

| *Location of school.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 295 | 217 | 162 |
| MONTANA. | | | | |
| Fort Peck Agency: | | | | |
| Wolf Point* | Presbyterian Ch. | .. | .. | 4 |
| NEW MEXICO. | | | | |
| Pueblo: Seama | Presbyterian Ch. | 60 | 46 | 33 |
| NEBRASKA. | | | | |
| Santee Agency: | | | | |
| Santee Normal (training†) | Congregational Ch. | .. | 9 | 6 |
| Total | | 355 | 272 | 205 |

(Page 327.)

Extract from report of Agent for Osage Agency:

Revenues: The Osage Indians, through the sale of their Kansas lands secured the sum of $8,271,143.38, on which the Government pays an interest of 5 per cent., amounting annually to $413,557.16. This interest money is used in maintaining the Osage boarding school, the St. John and St. Louis boarding schools, the Osage Agency, and the balance is distributed per capita to the Indians in quarterly payments, amounting from $40 to $50 quarterly per capita.

## REPORT FOR 1902 (Page 39).

### MISSION SCHOOLS.

The missionary work of the various Christian denominations among the adult Indians is supplemented by schools

* Attend Wolf Point Boarding School.
† Attend Santee Normal Boarding School.

conducted under their respective auspices. A majority of these schools are reservation boarding schools, where doctrinal teachings are given with literary training The Presbyterian Church maintains 4 boarding schools and no day schools; the Catholic Church, 31 boarding and 2 day schools; the Congregational Church, 3 boarding and no day schools; the Episcopal Church, 5 boarding and no day schools; the Reform Presbyterian Church, 1 boarding school; the Methodist Church South, 1 boarding school; and the Society for the Propagation of the Gospel, 1 boarding school. All of these schools seem to be doing excellent work in advancing the cause of Indian education and civilization.

These institutions are controlled by the church authorities, who furnish the amounts required for their support and maintenance, Government aid to sectarian schools having been withdrawn after Congress in the appropriation act for the fiscal year 1901 discontinued the contract-school system. The only exception made was in the appropriation for Hampton Normal and Agricultural College, in Virginia, with which school this office has a contract for the education of 120 Indian pupils.

The location, denomination controlling, and other information relative to mission schools will be found condensed in the following table:

TABLE NO. 10.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1902.

BOARDING SCHOOLS.

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| ARIZONA. | | | | |
| Tucson | Presbyterian Ch. | 170 | 150 | 148 |
| CALIFORNIA. | | | | |
| Banning | Catholic Church | 150 | 114 | 106 |
| San Diego | " " | 150 | 68 | 65 |
| Kelseyville (St. Turibius) | Catholic Church | 20 | 10 | 7 |
| IDAHO. | | | | |
| Coeur d'Alene Reservation: | | | | |
| De Smet Mission | Catholic Church | 150 | 82 | 79 |
| MICHIGAN. | | | | |
| Baraga | Catholic Church | 140 | 14 | 13 |
| Harbor Springs | " " | 126 | 79 | 77 |
| MINNESOTA. | | | | |
| White Earth Agency: | | | | |
| St. Benedict's | Catholic Church | 150 | 93 | 91 |
| Leech Lake Agency: | | | | |
| Red Lake Reservation (St. Mary's) | Catholic Church | 80 | 87 | 72 |
| MONTANA. | | | | |
| Blackfeet | Catholic Church | 150 | 76 | 71 |
| Crow | " " | 150 | 62 | 58 |
| Flathead | " " | 350 | 140 | 126 |
| Fort Belknap | " " | 250 | 93 | 76 |
| Fort Peck Agency, | | | | |
| Wolf Point | Presbyterian Ch. | 30 | 28 | 22 |
| Tongue River | Catholic Church | 65 | 55 | 52 |
| Carried forward | | 2131 | 1151 | 1063 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 2131 | 1151 | 1063 |
| NEBRASKA. | | | | |
| Santee Agency: | | | | |
| Santee Normal (training) | Congregational Ch. | 125 | 98 | 87 |
| NEW MEXICO. | | | | |
| Bernalillo | Catholic Church | 125 | 72 | 68 |
| Sante Fe, St. Catherine's | " " | 150 | 153 | 140 |
| NORTH DAKOTA. | | | | |
| Fort Berthold Agency: | | | | |
| Mission Home | Congregational Ch. | 46 | 41 | 38 |
| Devil's Lake Agency: | | | | |
| Turtle Mtn. (St. Mary's) | Catholic Church | 150 | 135 | 111 |
| Standing Rock Agency: | | | | |
| St. Elizabeth's | Episcopal Church | 60 | 63 | 55 |
| OKLAHOMA. | | | | |
| Kiowa Agency: | | | | |
| St. Patrick's | Catholic Church | 125 | 67 | 63 |
| Mary Gregory Memoriol | Presbyterian Ch. | 60 | 25 | 21 |
| Cache Creek | Refd. Presbyt'n Ch. | 50 | 49 | 46 |
| Methvin | Methodist Ch. South | 100 | 66 | 57 |
| Osage Agency: | | | | |
| St. Louis | Catholic Church | 125 | 56 | 51 |
| St. John's | " " | 150 | 38 | 34 |
| Sac & Fox Agency: | | | | |
| Sacred Heart, St. Mary's Academy | Catholic Church | 54 | 59 | 44 |
| Sacred Heart, St. Benedict's | Catholic Church | 50 | 49 | 33 |
| Carried forward | | 3501 | 2122 | 1911 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 3501 | 2122 | 1911 |
| OREGON. | | | | |
| Umatilla Agency: | | | | |
| Kate Drexel | Catholic Church | 150 | 70 | 47 |
| PENNSYLVANIA. | | | | |
| Philadelphia, Lincoln Institution | Voluntary Contributions | 70 | 50 | 50 |
| SOUTH DAKOTA. | | | | |
| Crow Creek | Catholic Church | 75 | 53 | 50 |
| Cheyenne River Agency: | | | | |
| St. John's | Episcopal Church | 60 | 50 | 50 |
| Plum Creek | Society for Propagation of the Gospel | 10 | 10 | 10 |
| Oake | Congregational Ch. | 50 | 41 | 35 |
| Pine Ridge | Catholic Church | 130 | 186 | 172 |
| Rosebud Agency: | | | | |
| St. Francis | Catholic Church | 250 | 234 | 222 |
| St. Mary's | Episcopal Church | 50 | 45 | 42 |
| Sisseton Agency: | | | | |
| Goodwill Mission | Presbyterian Ch. | 90 | 82 | 70 |
| Yankton Agency: | | | | |
| St. Paul's | Episcopal Church | 50 | 53 | 39 |
| WASHINGTON. | | | | |
| Colville Mission | Catholic Church | 150 | 67 | 62 |
| Puyallup Reservation | | | | |
| St. George's | Catholic Church | 90 | 87 | 52 |
| WISCONSIN. | | | | |
| Green Bay | Catholic Church | 170 | 175 | 139 |
| La Pointe Agency: | | | | |
| Bayfield | Catholic Church | 50 | 53 | 38 |
| Odanah, St. Mary's | " " | 100 | 88 | 85 |
| Carried forward | | 5096 | 3466 | 3074 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 5096 | 3466 | 3074 |
| WYOMING. | | | | |
| Shoshone Agency: | | | | |
| St. Stephen's | Catholic Church | 125 | 81 | 66 |
| Shoshone Mission | Episcopal Church | 20 | 18 | 13 |
| Total | | 5,241 | 3,565 | 3,153 |

DAY SCHOOLS.

| | | | | |
|---|---|---|---|---|
| ARIZONA. | | | | |
| Pima Agency: | | | | |
| San Xavier | Catholic Church | 125 | 136 | 101 |
| St. John's | " " | 140 | 130 | 109 |
| CALIFORNIA. | | | | |
| Kelseyville, St. Turibius* | Catholic Church | ... | 8 | 3 |
| MONTANA. | | | | |
| Fort Peck Agency: | | | | |
| Wolf Point† | Presbyterian Ch. | ... | 4 | ... |
| NEBRASKA. | | | | |
| Santee Agency: | | | | |
| Santee normal training‡ | Congregational Ch. | ... | 10 | 7 |
| Total | | 265 | 288 | 223 |

* Attend St. Turibius boarding school.
† Attend Wolf Point boarding school.
‡ Attend Santee Normal boarding school.

(Page 294.)

(Report of Agent for Osage Agency to The Commissioner of Indian Affairs):

SCHOOLS.—As stated in my last annual report, the Osage parent is not only willing but anxious to have his children educated. The contrary is a rare exception. In case a child deserts school and goes home the parent can confidently be depended upon to return the child to school. Facilities for schooling are ample to take care of reservation children, as follows: Osage boarding school, capacity, 180; average attendance, 159. St. Louis contract (Catholic) school for girls, capacity, 100; average attendance, 48. St. John contract (Catholic) for boys, capacity, 80; average attendance, 34. For detailed information relative to the Osage boarding school, I invite attention to the report of Superintendent J. L. Baker.

## REPORT FOR 1903 (Page 22).

### MISSION SCHOOLS.

The most valuable adjunct of the Government work of civilizing the Indian is the missionary and educational work of the various bodies of Christians who maintain schools and churches in the Indian country They are doctrinal and denominational in character, and seek to impress upon young and old the religion expounded by the respective churches. While there may have been slight friction at a few places, in the main there has been hearty co-operation between the missions and the Government in the great work in which both are zealously enlisted. The God-fearing, earnest, and sincere mission teacher is an immense power for good in uplifting the Indian race, developing the spiritual nature of its people, and making sober, religious men and women.

Forty-four boarding schools and 4 day schools were conducted by religious bodies or charitable organizations. The large majority are located in the Indian country in connection with mission churches and chapels. Of this number

the Presbyterian Church reported 4 boarding schools, the Catholic Church, 30 boarding schools and 3 day schools; the Episcopal Church, 3 boarding schools; the Reformed Presbyterian Church, 1 boarding school; the Congregational Church, 3 boarding schools; the Methodist Church South, 1 boarding school; the Society for the Propagation of the Gospel, 1 boarding school; Lincoln Institute, Philadelphia, Pa., supported by voluntary contributions; the Lutheran Church, 1 day school.

Contract schools were abolished by the discontinuance of Government aid by Congress in the Indian appropriation act of 1901. However, a special appropriation was made in the Indian appropriation act for the fiscal year 1903, for the education of 120 pupils at the Hampton (Va.) Normal and Agricultural Institute.

The location, denomination controlling, and other information relative to mission schools will be found condensed in the following table:

TABLE NO. 7.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING THE FISCAL YEAR ENDED JUNE 30, 1903.

BOARDING SCHOOLS.

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| ARIZONA. | | | | |
| Tucson | Presbyterian Ch. | 150 | 133 | 127 |
| CALIFORNIA. | | | | |
| Banning | Catholic Church | 150 | 148 | 121 |
| San Diego | " " | 150 | 90 | 86 |
| IDAHO. | | | | |
| Coeur d'Alene Reservation, De Smet Mission | Catholic Church | 150 | 80 | 67 |
| Carried forward | | 600 | 451 | 401 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 600 | 451 | 401 |
| MICHIGAN. | | | | |
| Baraga | Catholic Church | 140 | 14 | 14 |
| Harbor Springs | " " | 200 | 109 | 104 |
| MINNESOTA. | | | | |
| White Earth Agency: | | | | |
| St. Benedict's | Catholic Church | 150 | 101 | 99 |
| Leech Lake Agency: | | | | |
| Red Lake Resv. (St. Mary's) | Catholic Church | 80 | 71 | 62 |
| MONTANA. | | | | |
| Blackfeet | Catholic Church | 150 | 69 | 62 |
| Crow | " " | 150 | 68 | 64 |
| Flathead | " " | 400 | 192 | 172 |
| Fort Belknap | " " | 250 | 88 | 86 |
| Fort Peck Agy., Wolf Point | Presbyterian Ch. | 30 | 25 | 21 |
| Tongue River | Catholic Church | 65 | 56 | 53 |
| NEBRASKA. | | | | |
| Santee Agency: | | | | |
| Santee Normal Training | Congregational Ch. | 125 | 88 | 77 |
| NEW MEXICO. | | | | |
| Bernalillo | Catholic Church | 125 | 71 | 67 |
| Santa Fe (St. Catherine's) | Catholic Church | 150 | 153 | 145 |
| NORTH DAKOTA. | | | | |
| Fort Berthold Agency: | | | | |
| Mission Home | Congregational Ch. | 45 | 29 | 26 |
| Carried forward | | 2660 | 1585 | 1453 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 2660 | 1585 | 1453 |
| NORTH DAKOTA (*Continued*). | | | | |
| Devils Lake Agency: | | | | |
| Turtle Mtn. (St. Mary's) | Catholic Church | 150 | 96 | 79 |
| Standing Rock Agency: | | | | |
| St. Elizabeth's | Episcopal Church | 62 | 66 | 60 |
| OLKAHOMA. | | | | |
| Kiowa Agency: | | | | |
| St. Patrick's | Catholic Church | 125 | 65 | 61 |
| Mary Gregory Memorial | Presbyterian Ch. | 60 | 26 | 19 |
| Cache Creek | Refd. Presbyt'n Ch. | 50 | 49 | 47 |
| Methvin | Methodist Ch. South | 80 | 44 | 37 |
| Osage Agency: | | | | |
| St. Louis | Catholic Church | 125 | 80 | 64 |
| St. John's | " " | 150 | 41 | 39 |
| Sac and Fox Agency: | | | | |
| Sacred Heart, St. Mary's Academy | Catholic Church | 50 | 54 | 47 |
| Sacred Heart, St. Benedict's | Catholic Church | 50 | 42 | 33 |
| OREGON. | | | | |
| Umatilla Agency: | | | | |
| Kate Drexel | Catholic Church | 150 | 76 | 60 |
| PENNSYLVANIA. | | | | |
| Philadelphia Lincoln Institution | Voluntary contributions | 70 | 53 | 40 |
| Carried forward | | 3082 | 2277 | 2039 |

BOARDING SCHOOLS—(*Continued*).

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward | | 3782 | 2277 | 2039 |
| SOUTH DAKOTA. | | | | |
| Crow Creek | Catholic Church | 75 | 67 | 60 |
| Cheyenne River Agency: | | | | |
| Plum Creek | Society for Propagation of the Gospel | 10 | 10 | 10 |
| Oahe | Congregational Ch. | 75 | 67. | 60 |
| Pine Ridge | Catholic Church | 200 | 187 | 174 |
| Rosebud Agency: | | | | |
| St. Francis | Catholic Church | 250 | 240 | 223 |
| St. Mary's | Episcopal Church | 55 | 48 | 45 |
| Sisseton Agency: | | | | |
| Goodwill Mission | Presybterian Church | 90 | 59 | 51 |
| WASHINGTON. | | | | |
| Colville Mission | Catholic Church | 80 | 69 | 55 |
| Puyallup Reservation: | | | | |
| St. George's | Catholic Church | 80 | 73 | 50 |
| WISCONSIN. | | | | |
| Green Bay | Catholic Church | 170 | 187 | 159 |
| La Pointe Agency: | | | | |
| Bayfield | Catholic Church | 50 | 59 | 38 |
| Odanah, St. Mary's | " " | 100 | 90 | 90 |
| WYOMING. | | | | |
| Shoshoni Agency: | | | | |
| St. Stephen's | Catholic Church | 90 | 71 | 63 |
| Shoshoni Mission | Episcopal Church | 20 | 16 | 14 |
| Total | | 5,127 | 3,520 | 3,131 |

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| | DAY SCHOOLS. | | | |
| ARIZONA. | | | | |
| Pima Agency: | | | | |
| San Xavier's | Catholic Church | 125 | 116 | 100 |
| St. John's | " " | 140 | 152 | 118 |
| CALIFORNIA. | | | | |
| Kelseyville, St. Turibius | Catholic Church | 20 | 10 | 6 |
| MONTANA. | | | | |
| Fort Peck Agency: | | | | |
| Wolf Point* | Presbyterian Ch. | ... | 2 | 2 |
| Santee Agency: | | | | |
| Santee Normal training † | Congregational Ch. | ... | 14 | 8 |
| WISCONSIN. | | | | |
| Green Bay Agency: | | | | |
| Lutheran Mission | Lutheran Church | 40 | 11 | 6 |
| Total | | 325 | 305 | 240 |

(Page 272.)

(Report of Agent of Osage Agency to the Commissioner of Indian Affairs):

For information relative to the Kaw Boarding School and the Osage Boarding School, I respectfully call your attention to the reports on those institutions by the officers having immediate supervision.

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*Attend Wolf Point boarding school.

†Attend Santee Normal boarding school.

## REPORT FOR 1904 (Page 45).

### MISSION SCHOOLS.

From the earliest colonial times, from the days of Eliot and Pere Marquette, to the present, the Christian bodies of our country have manifested great interest in the Indian. Early in the field, devoted missionaries pushed on with the pioneers, and frequently in advance, in their earnest, self-sacrificing devotion to the cause of spreading the gospel among our Indian wards. With the Bible and the school-book, they dotted theWest with Churches and mission schools, from which the beginnings of civilization reached the savage Indian. Frequently taking their lives in their hands, they braved the rigors of northern winters and the burning deserts of the Southwest, in fervent zeal for the cause they represented. After the Government began seriously and intelligently to develop the work of educating and civilizing the Indians, some of the religious bodies gradually dropped out of the ranks of educators and devoted their efforts and funds more strictly to the preaching and teaching of the gospel. A number, however, have remained in the field, and are earnestly laboring among the young in schools which are usually auxiliaries of the particular church supporting them. These schools are valuable assistants in uplifting the Indian race.

Forty-six boarding schools and three day schools were conducted by religious bodies or charitable organizations. The large majority are located in the Indian country in connection with mission churches and chapels. Of this number the Presbyterian Church reported 4 boarding schools; the Catholic Church 30 boarding schools and 3 day schools; the Episcopal Church 3 boarding schools; the Reformed Presbyterian Church 1 boarding school; the Congregational Church 3 boarding schools; the Methodist Church South 1 boarding school; the Lutheran Church 3 boarding schools; Lincoln Institution, Philadelphia, Pa., supported by voluntary con-

tributions. Under special appropriation of Congress a contract was made for the education of 120 pupils in the Hampton, Va., Normal and Agricultural Institute.

The location, denomination controlling, and other information relative to mission schools will be found in the following table:

TABLE NO. 9.—LOCATION, CAPACITY, ENROLLMENT, AND AVERAGE ATTENDANCE OF MISSION SCHOOLS DURING FISCAL YEAR ENDED JUNE 30, 1904.

| *Location.* | *Supported by:* | *Capacity* | *Enrollment* | *Average attendance* |
|---|---|---|---|---|
| | BOARDING SCHOOLS. | | | |
| Arizona: | | | | |
| Tucson | Presbyterian Church | 150 | 150 | 140 |
| California: | | | | |
| Banning | Catholic Church | 150 | 151 | 123 |
| San Diego | " " | 150 | 78 | 77 |
| Idaho: | | | | |
| Coeur d'Alene Reservation, De Smet Mission | Catholic Church | 150 | 75 | 70 |
| Michigan: | | | | |
| Baraga | " " | 140 | 19 | 14 |
| Harbor Springs | " " | 150 | 130 | 123 |
| Minnesota: | | | | |
| White Earth Agency: | | | | |
| St. Benedict's | Catholic Church | 150 | 103 | 99 |
| Leech Lake Agency: | | | | |
| Red Lake Reservation (St. Mary's) | " " | 80 | 89 | 71 |
| Montana: | | | | |
| Blackfeet | Catholic Church | 150 | 91 | 77 |
| Crow | " " | 150 | 71 | 68 |
| Flathead | " " | 400 | 190 | 163 |
| Carried forward | | 1820 | 1147 | 1025 |

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward... | | 1820 | 1147 | 1025 |
| Montana (*Continued*): | | | | |
| Fort Belknap ..... | " " | 250 | 87 | 82 |
| Fort Peck Agency: | | | | |
| Wolf Point ..... | Presbyterian Church | 35 | 31 | 27 |
| Tongue River..... | Catholic Church | 65 | 57 | 53 |
| Nebraska: | | | | |
| Santee Agency: | | | | |
| Santee Normal Training ..... | Congregational Church | 125 | 100 | 73 |
| New Mexico: | | | | |
| Bernalillo ..... | Catholic Church | 125 | 69 | 68 |
| Sante Fe, St. Catharine's ..... | " " | 150 | 148 | 140 |
| North Dakota: | | | | |
| Fort Berthold Agency: | | | | |
| Mission Home ..... | Congregational Church | 47 | 20 | 15 |
| Devils Lake Agency: | | | | |
| Turtle Mtn. (St. Mary's) ..... | Catholic Church | 150 | 129 | 108 |
| Standing Rock Agency: | | | | |
| St. Elizabeth's ..... | Episcopal Church | 62 | 58 | 47 |
| Oklahoma: | | | | |
| Kiowa Agency: | | | | |
| St. Patrick's..... | Catholic Church | 125 | 58 | 54 |
| Mary Gregory ..... | Presbyterian Church | 60 | 27 | 25 |
| Cache Creek ..... | Rfd. Presbyt'n Church | 50 | 44 | 43 |
| Methvin ..... | Methodist Church South | 60 | 80 | 68 |
| Osage Agency: | | | | |
| St. Louis..... | Catholic Church | 125 | 72 | 69 |
| St. John's ..... | " " | 150 | 44 | 41 |
| Carried forward .... | | 3399 | 2171 | 1938 |

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance* |
|---|---|---|---|---|
| Brought forward... | | 3399 | 2171 | 1938 |
| Oklahoma (*Continued*): | | | | |
| Sac & Fox Agency: | | | | |
| Sacred Heart (St. Mary's Academy) | " " | 65 | 60 | 50 |
| Sacred Heart (St. Benedict's)..... | " " | 50 | 42 | 35 |
| Oregon: | | | | |
| Umatilla Reservation: | | | | |
| Kate Drexel..... | Catholic Church | 150 | 73 | 51 |
| Pennsylvania: | | | | |
| Philadelphia: Lincoln Institution..... | Voluntary contributions | 100 | 45 | 40 |
| South Dakota: | | | | |
| Crow Creek..... | Catholic Church | 75 | 69 | 61 |
| Cheyenne River Agency: | | | | |
| Oahe..... | Congregational Church | 50 | 12 | 10 |
| Pine Ridge..... | Catholic Church | 200 | 193 | 184 |
| Rosebud Agency: | | | | |
| St. Francis..... | " " | 250 | 261 | 234 |
| St. Mary's..... | Episcopal Church | 55 | 48 | 45 |
| Sisseton Agency: | | | | |
| Goodwill Mission.. | Presbyterian Church | 100 | 84 | 73 |
| Washington: | | | | |
| Colville Mission..... | Catholic Church | 80 | 65 | 51 |
| Puyallup Reservation: | | | | |
| St. George's..... | " " | 80 | 78 | 64 |
| Wisconsin: | | | | |
| Green Bay Reservation: | | | | |
| St. Joseph's..... | Catholic Church | 170 | 181 | 162 |
| Lutheran Mission.. | Lutheran Church | 20 | 23 | 7 |
| Zoar Mission..... | " " | 40 | 14 | 8 |
| Bethany Mission... | Evangelical Luth. Ch. | 60 | 27 | 22 |
| Carried forward.... | | 4944 | 3446 | 3035 |

| *Location.* | *Supported by:* | *Capacity.* | *Enrollment.* | *Average attendance.* |
|---|---|---|---|---|
| Brought forward... | | 4944 | 3446 | 3035 |
| Wisconsin (*Continued*): | | | | |
| La Pointe Agency: | | | | |
| Bayfield ..... | Catholic Church | 140 | 62 | 52 |
| Odanah (St. Mary's) | " " | 100 | 83 | 77 |
| Wyoming: | | | | |
| Shoshoni Agency: | | | | |
| St. Stephen's ..... | Catholic Church | 90 | 110 | 100 |
| Shoshoni Mission... | Episcopal Church | 20 | 15 | 13 |
| Total ..... | | 5294 | 3716 | 3277 |

DAY SCHOOLS.

| | | | | |
|---|---|---|---|---|
| Pima Reservation: | | | | |
| San Xavier's ..... | Catholic Church | 125 | 110 | 100 |
| St. John's ..... | " " | 140 | 148 | 135 |
| California: | | | | |
| Kelseyville, St. Turibius..... | Catholic Church | 15 | 10 | 10 |
| Montana: | | | | |
| Fort Peck Agency: | | | | |
| Wolf Point* ..... | Presbyterian Church | 10 | 2 | 2 |
| Santee Agency, Santee Normal Training† ..... | Congregational Church | .. | 11 | 9 |
| Wisconsin: | | | | |
| Green Bay, Lutheran Mission ..... | Lutheran Church | 20 | 15 | 6 |
| Total ..... | | 310 | 296 | 262 |

* Attend Wolf Point boarding school.
† Attend Santee Normal boarding school.

(Page 300.)

Report of Agent for Osage Agency to the Commissioner of Indian Affairs:

SCHOOLS.

Two schools have been maintained under the supervision of the agent throughout the year. * * * * Besides the Indian children who attended these schools a large majority of those of school age were enrolled in the nonreservation schools, the two Catholic boarding schools on the reserve, etc.

(Page 371.)

Report of Superintendent of St. Joseph's Industrial school to the Superintendent in charge of Green Bay Agency, Wisconsin:

SUPPORT.

As already during the four preceding years, thus, also, for the first part of the fiscal year until December 31, 1903, we depended on charitable contributions, especially on the Catholic Indian Bureau, of Washington, D. C.; but after that we were aided by the honorable Commissioner of Indian Affairs, W. A. Jones, to whom we are under great obligations for the means we have received.

MAR 4 190
JAMES H. McKEN

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

vs.

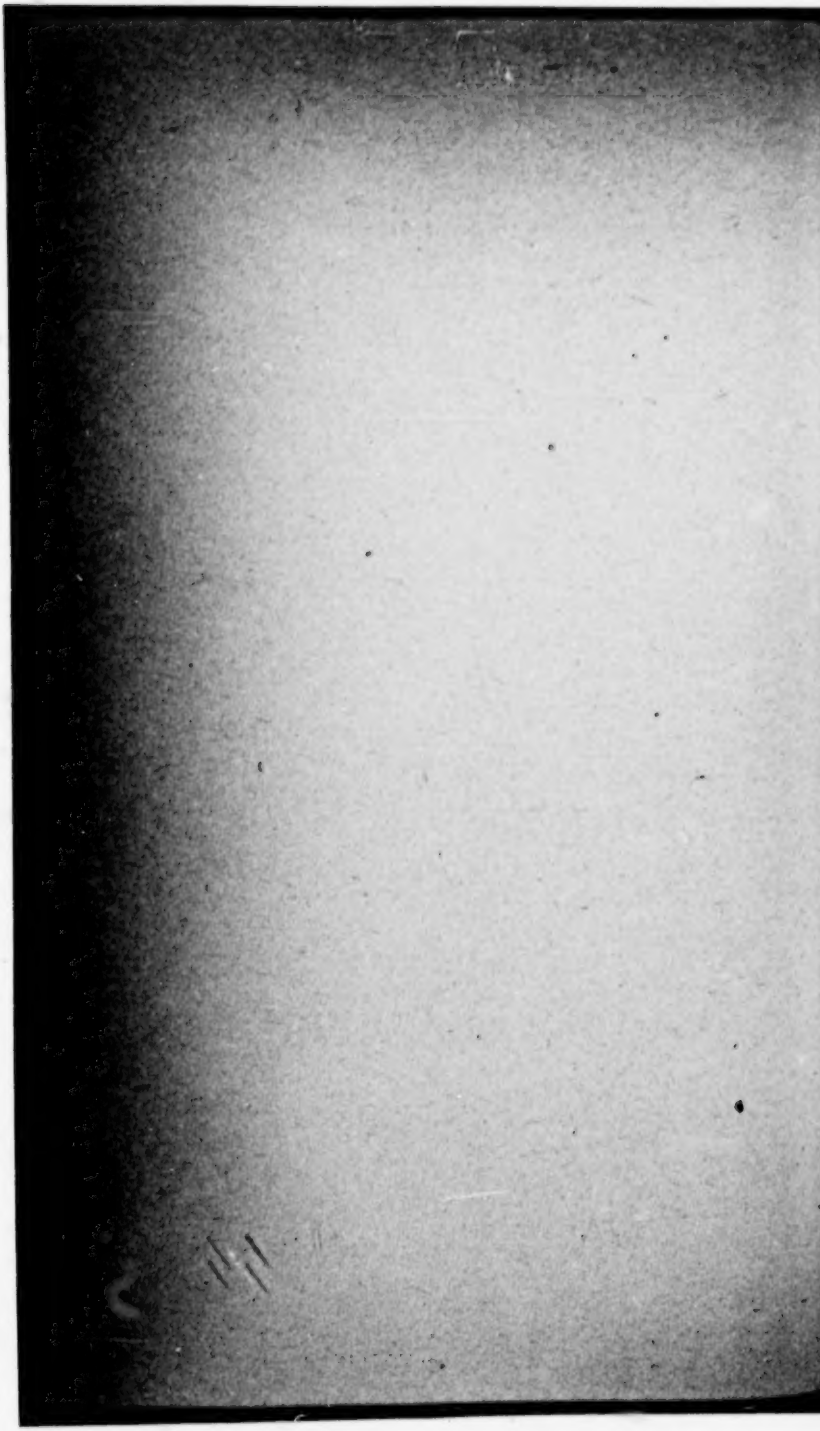
FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States; and ROBERT J. TRACEWELL, Comptroller of the Treasury.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## APPELLANTS' BRIEF IN REPLY.

CHARLES C. BINNEY,
*Solicitor for Appellants.*

N. DUBOIS MILLER,
HAMPTON L. CARSON,
*Of Counsel.*



IN THE

# Supreme Court of the United States.

October Term, 1907.

No. 569.

REUBEN QUICK BEAR, RALPH EAGLE FEATHER, and CHARLES TACKETT, on behalf of themselves and all other members of the Sioux Tribe of Indians of the Rosebud Agency, S. D., Appellants,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD, Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury; CHARLES H. TREAT, Treasurer of the United States; and ROBERT J. TRACEWELL, Comptroller of the Treasury.

**APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.**

## APPELLANTS' BRIEF IN REPLY.

### What the Term "Public Moneys" Includes.

The appellees' brief, after reviewing the legislation in regard to contracts with sectarian schools, says (p. 8):

> This statement of policy ["the settled policy of the Government"], in so far as it can now have any legal

> effect, was intended only to apply to appropriations of public moneys for education in sectarian schools. . . . The cessation of the appropriation from the public moneys for education in the sectarian schools was treated as the accomplishment of the purpose contained in the statement of the policy found in the Acts of 1896 and 1897.
>
> . . . These appropriations ceased with the Indian Appropriation Act of 1899, have never been made since, nor is anyone asking that they should be made, or that any public moneys of the United States raised by taxation should be employed for such purposes.

Again, on page 9, the appellees' brief says, in regard to treaty funds in general:

> . . . although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

The appellees' contention is that the term "appropriation," as used in the legislation regarding contracts with sectarian schools, means an appropriation of "public moneys of the United States raised by taxation"; and further, that neither the Sioux Treaty Fund, nor the Sioux Trust Fund, nor any other similar Indian funds, are "public moneys of the United States raised by taxation." (See Appellees' Brief, p. 24.) The first point may be practically conceded, because all the money in the United States Treasury, subject to appropriation by Congress, has been raised by taxation, except the proceeds of the sale of Government bonds (which must ultimately be redeemed from money raised by taxation, and which may therefore be treated as representing such money), and the proceeds of sales of public lands, which latter funds are relatively so small in amount that they may be disregarded.

Even the Sioux trust fund, deposited in the Treasury to the credit of the Sioux Tribe, undoubtedly came into the Treasury originally in the form of money raised by taxation. The second point of the contention, however, cannot, it is submitted, be sustained.

The language used by Congress in the very inception of its course in abolishing sectarian contract schools, shows that Congress did not intend to limit itself to discontinuing those particular contract schools which were supported from the general appropriation for "Support of Schools." The Indian Appropriation Act of August 15, 1894 (28 Stats. 311) contains this provision:

> That the expenditure of money appropriated for school purposes *under this act* shall be at all times under the supervision and direction of the Commissioner of Indian Affairs, and in all respects in conformity with such conditions, rules and regulations as to the conduct of and methods of instruction and expenditure of money, as may from time to time be prescribed by him, subject to the approval of the Secretary of the Interior: *Provided*, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools, and whether, in his judgment the same can be done without detriment to the education of Indian children, and that he submit to Congress at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper.

The words, "money appropriated for schools *under this act*," cannot be restricted to the appropriation for "Support of Schools," but are obviously intended to include all appropriations of money for school purposes, contained in any portion of the act. They therefore necessarily include all the Indian funds appropriated for in that act, in so far as the same

were available for school purposes, including the Sioux treaty fund, which is found on page 299, a part of which is expressly appropriated for school purposes, while a portion of the balance also has always been regarded as available for the same purpose. In other words, this provision places the entire school fund appropriated for by that act under the supervision and direction of the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior, and the investigation which the Secretary was directed to make certainly related to all contract schools which were supported from that fund. The scope of his investigation cannot have been intended to be limited by any narrower limits than those of the application of this entire fund, in so far as it was applied to the support of any sectarian contract schools whatever. As a matter of fact the Secretary reported (Ho. Ex. Doc. No. 107, 53 Cong., 3d. Sess.; Rec. 15) in regard to contract schools in general, necessarily including the few which were supported from Indian trust funds, not appropriated for in the Indian Appropriation Act, and presumably Congress had intended that he should so report in regard to the whole system; but at all events the broad language used in the very first sentence of the first provision looking towards a discontinuance of contract schools, makes it certain that there was no intention to restrict the investigation to those particular contract schools which were supported from one of the appropriations made in the act, to the exclusion of those supported from other appropriations made in the same act.

The subsequent provisions in the Acts of 1895 to 1899 inclusive, being all directed towards the carrying out of the system proposed in the Secretary of the Interior's report, must be understood as having the same comprehensive scope as that of the report itself, *i. e.*, as relating to the entire contract school system, and indeed the broad language used in these statutes cannot properly receive any more limited interpretation.

As regards Indian treaty funds, the appropriation which

annually creates them is certainly just as much an appropriation of "public moneys of the United States raised by taxation," as is any other appropriation. The money is undoubtedly raised by taxation, and until the moment when it is paid over by the proper disbursing agent it is just as certainly "public moneys of the United States," as is any other money disbursed by the Government. Should the disbursing officer embezzle it, he would not be charged with having embezzled the money of individual Indians, nor even the money of a tribe, but he would certainly be indicted for embezzlement of public money, under section 5488 of the Revised Statutes.

Until the actual moment of disbursement, how does the money appropriated to fulfill Indian treaties lose its character as "public moneys of the United States," any more than money appropriated for a contract for a battleship? The legal obligation to pay over the money is of as high a character in both cases; in each case the appropriation simply designates the purpose to which the money is to be applied; and in each case the money is held in the Treasury, or in the hands of the disbursing officers, in the interval between appropriation and payment, for the ultimate benefit of the parties who are to receive it. If there be no difference in these particulars between an appropriation to fulfill Indian treaties and an appropriation for a contract for a battleship, surely there can be no difference in those particulars between the former and an appropriation for "Support of Schools." The one must be "public moneys of the United States" precisely to the same extent as the other.

The same is really true of Indian trust funds, though the interest in the latter becomes available under a permanent annual appropriation, instead of having to be specifically appropriated each year. A disbursing officer who embezzled the interest on an Indian trust fund would be indicted for embezzlement of public money, under section 5488 of the Revised Statutes, just as if he had embezzled money belonging to an Indian treaty fund or money appropriated for

"Support of Schools." Moreover the Revised Statutes clearly regard all "funds held in trust by the United States" as public moneys, section 3659, in regard to such trust funds, being placed under Title XL, "The Public Moneys." The reference in this section to treaties obviously includes Indian treaties, and in point of fact Indian treaty funds have always constituted the great bulk of the funds held in trust by the United States. If, therefore, the statutes in regard to contracts with sectarian schools are concerned merely with the use of "public moneys of the United States" for the support of such schools, as the appellees' brief says, even then they necessarily relate to the use of Indian treaty funds, and of Indian trust funds as well.

## The Position of the Provisions as to Contracts with Sectarian Schools.

On page 24 the appellees' brief points out that in the Indian Appropriation Acts the Sioux Treaty Fund, and other similar treaty funds, are appropriated for under one heading, while the general appropriation for "Support of Schools" is made under another heading, the contention being that "these things are kept separate, not by accident or inadvertence, but because they are essentially different in their nature," with the inference that the provisions in regard to contracts with sectarian schools, being found under the heading "Support of Schools," cannot relate to anything except what is found under that heading. It is submitted that the appropriations are kept separate simply as a matter of orderly arrangement, not on account of any fundamental distinction in character. There is a certain system followed in the framing of these appropriation bills. The appropriations which relate to particular tribes come first, and are immediately followed by the appropriation for "Support of Schools," which relates to all the tribes in general. By this system the appropriation for the Sioux treaty fund is found a very few pages, sometimes more and sometimes fewer, from the appro-

priation for "Support of Schools," but this separation might be much greater, or might not exist at all, without affecting the character of the former appropriation. It is significant that all these appropriations are always made in the same section of the Appropriation Act, section 1, thus indicating that Congress regards them all as appropriations of the same general character and purpose. The provisions in regard to contracts with sectarian schools were naturally placed in that portion of the section which related to the appropriation for "Support of Schools," because the contract schools were mainly supported from that appropriation, but the comprehensive language of these provisions shows that they were intended to apply to contract schools in general, without regard to the particular fund used for them. The only classes of schools which Congress wished to except from the operation of these provisions (viz., public schools and schools specifically provided for) were specially excepted by a proviso in each one of the statutes, which special exception shows conclusively, if any further proof were needed, that no other schools were intended to be excepted.

## The President's Letter and the Attorney General's Statement.

The appellees' brief (pp. 8, 9) undertakes to define Indian "Trust Funds" and Indian "Treaty Funds," and then goes on to cite "examples of these funds"; but, as a matter of fact, all the examples cited, taken from the Attorney General's statement (Rec. 24), are instances of "Trust Funds," the principal of which is on deposit in the United States Treasury, the interest only being available from year to year. This failure to cite any examples of "Treaty Funds" indicates a certain confusion, in the mind of the appellees' counsel, as to the precise difference between the two kinds of funds. This confusion of the two funds becomes even more evident later on in the brief.

Thus on page 13 the appellees' brief states that "at the re-

quest of the Osage Indians their treaty funds have been annually and uninterruptedly appropriated to the Catholic Mission schools under annual contract," nothing being said as to trust funds. As a matter of fact, in the years covered by the information contained in the record (Rec. 34–45), the trust fund was very much more largely used for this purpose, and in the fiscal years 1895, 1896 and 1898 the latter was used exclusively.

The appellees' brief (p. 15) cites in full the President's letter of February 3, 1905, to the Secretary of the Interior, directing the making of contracts with sectarian schools. This is interesting historically, but can hardly be regarded as an authority which could in any way affect the decision of a court. It is, however, important to notice that the President's letter does not authorize the making of such a contract as was made in the present case. The letter says (brief, p. 16):

> . . . The request was made . . . that where there were Indian moneys *held in trust* for the Indians by the Secretary of the Interior, the interest on these Indian moneys *being distributed among the individual Indians* or in such other ways as the Secretary of the Interior might direct, and where certain of the Indians petitioned that *the moneys so distributed to them* should be used for the support of the particular denominational school which they desired their children to attend, this petition should be granted. . . .
>
> This new request was submitted to the Department of Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to *moneys belonging to the Indians themselves*, and not to the public. . . . There was, in my judgment, no question that . . . they were entitled as a matter of moral right to have *the moneys coming*

*to them* used for the education of their children at the schools of their choice.

It is perfectly clear from the language used in this letter, that the President was referring to Indian trust funds exclusively, and not to treaty funds at all; and the report of the Attorney General, referred to in the letter, and printed on pages 23–26 of the record (see Appellees' Brief, p. 18), also related exclusively to Indian trust funds, and had no reference whatever to Indian treaty funds. Moreover, the President's letter only authorizes the making of contracts payable from those trust funds, or portions of trust funds, the interest on which would be "distributed among the individual Indians." (Appellees' Brief, p. 16, line 23.) He was considering the petition of certain Indians "that the moneys so distributed to them" should be used for sectarian education, and it is such money as this that he refers to when he says that the Indians' wishes should be respected "when they request that *their own money*" be applied to this purpose.

The President's idea evidently was that as there were certain funds, or portions of funds, the interest on which might be distributed among the Indians in cash *per capita*, the proportionate shares of such Indians as wished to have their children educated in sectarian schools might fairly be used for such a purpose, instead of being distributed *per capita*. Now the Commissioner of Indian Affairs has stated, in regard to the present contracts and those made about the same time, that the payments were to be made from the "same funds out of which the government schools were supported," not from "the fund out of which *per capita* payments to the Indians were made," but from "those funds which are not susceptible to equal division." (Ans. No. 5, Rec. 33.) This shows conclusively that whatever importance be attached to the President's letter, it utterly fails to authorize the present contract.

As to the opinion or report of the Attorney General, referred to in the letter, it must be further said that the advice given

was largely based upon the statements of certain members of the Senate and House in debate (see rec. 25, lines 41-47), but whatever light the Attorney General may have obtained from these sources, it is well settled that a Court in deciding upon the interpretation of a statute must regard statements made in debate as wholly irrelevant. (*United States* vs. *Freight Assn.*, 166 U. S., 316.) Then, too, the reference (Rec. 26, line 4) to "the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools," does not really warrant the Attorney General's conclusion that the discretion to use the money for this latter purpose remained. Whatever discretion the Secretary may have had in the matter was subject to the control of Congress, and if that body has (as is submitted) deprived him of authority to contract with sectarian schools, such deprivation must necessarily affect whatever authority he may have previously had by treaty or otherwise, and must therefore repeal *pro tanto* previous treaties and statutes giving such authority. As a matter of fact, the authority given by these previous treaties and statutes seems to have always been given in general terms, without any mention of contracts with sectarian schools (such as might be inferred from the Attorney General's words, "including assistance to sectarian schools"), and certainly such is the fact in the particular treaty and statutes involved in the present case.

In this connection it is also significant that while the Attorney General's statement advises the President that the interest on the trust funds might be used for education in sectarian schools, it does not advise him that any contract could be made for such education. On the contrary it says, "These funds can be used for sectarian schools, *but it would be well to do that otherwise than under contracts.*" (Rec. 24, 8th par.) Evidently the then Attorney General was at least doubtful as to the legality of any contracts with sectarian schools.

## Congress Undertook to Regulate Contracts, Not Appropriations.

The discussion of "Appropriations of Public Moneys for Education among the Indians" on pages 25-30 of the appellees' brief, is based upon a misunderstanding of the statutes and the Secretary's report of 1894, as is shown by the misquotations from them. The appellees' special counsel has so completely convinced himself that the restrictions imposed upon the power to contract with sectarian schools extended only to contracts payable out of the appropriation for "Support of Schools," that he has forgotten to quote the actual language of those restrictions, and has given instead language which would make them refer to the appropriations, and not to the contracts.

Thus on page 25, last paragraph, counsel states that the Secretary "suggested* a gradual reduction in the public appropriations." Not at all. What he suggested was a gradual reduction in the sectarian contract schools. He said:

> We need the schools now, or else we need a large appropriation to build schools to take their place.
>
> It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the Department, and unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%.

* This suggestion is not contained in the Secretary's annual report for 1894, as stated in the answer in this case (Rec. 15), but in a special report, viz. House Ex. Doc. No. 107, 53d Cong., 3d Sess. The extract from this report, given in the answer, is, however, correct.

Here the words "them" and "they" obviously refer always to the schools, and while the word appropriation is once used, it does not refer to the appropriation by Congress, which had not been decreased at all, but to the Secretary's own appropriation, or use, of the money placed at his disposal.

The statement as to what the Secretary's recommendations meant (Appellees' Brief, p. 26) is entirely colored by this same erroneous idea that the Secretary was referring to appropriations rather than to contract schools. There may not be "the remotest allusion to restricting Indians in the use of their own moneys," but the entire report concerned the restriction of sectarian contract schools, which schools were of precisely the same character, and contracted with in precisely the same way, whether the money was paid out of one appropriation or another. The next paragraph on the same page of the brief says:

> In accordance with this recommendation, Congress for the first time introduced in the appropriation Act of 1895, Ch. 188, a limitation on the use of public moneys in Sectarian Schools.

It is true that the practical effect of the action of Congress was to limit the use of "public money," by which counsel means money appropriated for "Support of Schools," but what Congress actually did was to limit the Secretary's power to contract with sectarian schools, without regard to the particular money affected thereby.

In contending that the restriction contained in the Appropriation Act of 1895, related only to the appropriation for "Support of Schools," appellees' special counsel makes an extraordinary misstatement. He says (Brief, p. 27):

> The sum appropriated was $1,164,350. Of this sum 80 per cent. was authorized to be expended with contract schools, as these were the schools which up to that time had educated the Indians.

The actual provision, which is correctly quoted a few lines above on the same page, restricts the making of contracts, limiting it "to an extent not exceeding 80 per cent. of the amount so used in the fiscal year 1895," which was a very much smaller sum than the $1,164,350 appropriated. The amount so used for contract schools in 1895, as stated in the report for that year, was $285,715* for schools not specially appropriated for, and $177,790 for schools especially appropriated for, making $463,505 altogether, 20 per cent. of which is $92,701, which constituted the reduction in the contracts for 1896. (Appx. 55, last paragraph.)

Again on page 28 the brief says:

> Congress was dealing only with the appropriation of public moneys for sectarian education. These appropriations were being reduced at the rate of 20% a year, so that in five years they would entirely cease.

This statement is true in a sense, in that it indicates a part of the effect of the legislation, but it is not an accurate statement of what Congress actually did. Congress did not reduce any appropriation, but it did make five successive reductions in the extent of the Secretary's power to make contracts with sectarian schools. The words "this being the final appropriation for sectarian schools" simply mean "this being the final appropriation of which any part shall be available for sectarian schools," for as a matter of fact only a very small part of the total appropriation was so available.

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* Through a printer's error, the total amount paid for the contracts for 1895, other than those for schools specially appropriated for, is incorrectly stated in the appendix (p. 60). The proper figure is $285,715, the amount estimated in the report for 1894. (Appx. 54.) To this should be added $177,790 paid on contracts for schools specially appropriated for, making $463,505 in all. In the reports for 1896 (Appx. pp. 62–65) and subsequent years, the schools specially appropriated for are included in the same table as the others.

## The Appellees' Authorities.

The authorities cited on page 30 of the appellees' brief (*Bank for Savings* vs. *Collector*, 3 Wall. 495; *Henderson's Tobacco*, 11 Wall. 652; *Savings Bank* vs. *United States*, 19 Wall. 227) have no real bearing upon the present case. In *Bank for Savings* vs. *Collector* the proviso was that a certain section should not apply to certain associations or to savings banks. In *Henderson's Tobacco* the proviso was that proceedings to enforce a forfeiture under the act should be commenced within twenty days after seizure of the property. In *Savings Bank* vs. *United States* the statute imposed a tax upon dividends and undistributed surplus, and, the proviso having declared that the interest paid by savings banks should not be considered as dividends, it was held that this proviso did not affect the liability of a savings bank for taxes on undistributed surplus. There is not the slightest analogy between any of these decisions and the present case, where the provisos are all provisos in form only. They constitute a series of provisions of positive legislation, couched in terms not limited in their operation to the subject matter of any particular section nor to any particular appropriation, and the meaning and effect would have been precisely the same had the words "provided that" been omitted in each instance.

The case of *Roberts* vs. *Bradfield* (12 App. Cas. D. C., 475, Appellees' Brief, p. 34) has no bearing upon the present issue. That case merely decided that a declaration of the Government's policy analogous to those in the acts of 1896 and 1897, but limited to take effect only after a certain date, could not affect a contract which would be completely executed before that date. The decision in the same case upon final appeal (*Bradford* vs. *Roberts*, 175 U. S., 271) is equally outside of the present discussion. That case held that under the charter of the Providence Hospital it was not a sectarian institution, whether the individuals who composed the corporation

happened to belong to the same religious body or not, but this has really nothing to do with the case here, because the answer very frankly concedes that the school in question is a sectarian school within the meaning of the acts of Congress.

The Stephens bill and the McCumber amendment can hardly be said to constitute "aids to interpretation" of the statutory provisions in regard to contracts with sectarian schools, though cited for this purpose in the appellees' brief (p. 37). The former indicates that Mr. Stephens supposed that the declaration of "the settled policy of the Government" might not apply to Indian trust funds, and that it should be made to do so explicitly. This indication of his opinion cannot stand on any higher ground than a statement in debate, which a court cannot regard, and at all events it was limited to trust funds. The fact that the bill was tabled in Committee, so that it never was submitted to Congress as a whole for action, is conclusive against its being taken as an indication of the understanding of that body. The same may be said of the McCumber amendment, which, though passed by the Senate, never came before the House for action, being struck out by the conference committee. As a matter of fact this amendment, as adopted by the Senate, related mainly to a proposed method by which an individual Indian might direct that any money which might be allotted to him from a trust fund, might be used for education in a sectarian school, —a totally different matter from the making of a contract, by the Secretary of the Interior, for such education.

The provisions in the Indian Appropriation Act for the fiscal year 1907 (Act of June 21, 1906, ch. 3504, 34 Stats. 326) and in the Osage Reservation Act of June 28, 1906, sec. 4 (34 Stats. 542), cited in the appellees' brief (p. 39) have absolutely no bearing upon the intention of Congress in adopting the provisions of the Acts of 1895 to 1899 inclusive, in regard to contracts with sectarian schools. The Act of June 21, 1906, permitted mission boarding schools to receive the rations of food and clothing issued to the children at such

schools, while the Act of June 28, 1906, as an incident in the disposition of the property of the Osages, set aside a portion of their income (which would otherwise have been distributed among the individual members of the tribe) for the support of certain sectarian schools for ten years. These Acts merely sanctioned certain arrangements which the Indians saw fit to make with sectarian schools, in regard to property actually distributed or distributable among the Indians, but neither Act involved any contract between the Secretary of the Interior and any sectarian school.

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N. DUBOIS MILLER,
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*Of Counsel*

REUBEN QUICK BEAR, RALPH EAGLE FEATHER and CHARLES TACKETT, on behalf of themseles and all other members of the Sioux Tribe of Indians of the Rosebud Agency, South Dakota, *Appellants*,

*vs.*

FRANCIS E. LEUPP, Commissioner of Indian Affairs; JAMES RUDOLPH GARFIELD Secretary of the Interior; GEORGE BRUCE CORTELYOU, Secretary of the Treasury, ET AL. *Appellees.*

IN THE

# Supreme Court

OF THE

# United States.

OCTOBER TERM, 1907.

No. 569.

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**Appeal from the Court of Appeals of the District of Columbia.**

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## BRIEF FOR APPELLEES.

### I.

### HISTORY OF APPROPRIATIONS OF PUBLIC MONEYS FOR EDUCATION OF INDIANS.

The education of the Indians in the United States began under the auspices of the Catholic Mission Schools, which were erected many years ago at the cost of charitable

Catholics, and with the approval of the Government of the United States, whose policy it was then to encourage the civilization of the Indians through the work of religious organizations.

Under the provisions of the Act of 1819, ten thousand dollars were appropriated for the purpose of extending financial help "to such associations or individuals who are already engaged in educating the Indians" as may be approved by the War Department. In 1820 twenty-one schools conducted by different religious societies were given eleven thousand, eight hundred and thirty-eight dollars ($11,838), and from that date until 1870, the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. For a long time the different denominational schools referred to were aided by the Government without any formal contract.

In 1870 an Act of Congress was passed appropriating one hundred thousand dollars ($100,000) for the support of Indian schools among Indian tribes not otherwise provided for, *i. e.*, among tribes not having treaty stipulations providing funds for educational purposes, and these appropriations continued until 1876. Contracts were made annually with the mission schools of the different denominations payable out of this appropriation for the education of Indian pupils. As to the tribes having funds for educational purposes under treaty stipulations, contracts were also made with the mission schools of the different denominations payable out of the treaty funds. In 1876 Congress began the general appropriation "for the support of industrial schools and other educational purposes for the Indian tribes," and these annual appropriations from the public moneys of the United States have been made from that time until the present. These appropriations always were put in the appropriation Acts under the heading "Support of Schools"—and from these public funds, and in the discretion of the Commissioner

of Indian Affairs, from the tribal funds hereinafter explained, were paid the amounts due under the contracts made by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior with the various denominational schools for the education of Indian pupils.

Some time before 1895 opposition developed to these contracts with denomination schools, on the ground that the public moneys of the United States raised by taxation should not be used for education in sectarian institutions, and also for other reasons.

Accordingly there is found in the Appropriation Act of 1894, Chapter 290 (28 Statutes at Large, page 311), approved August 15, 1894, in that part of the Act appropriating the public moneys for the support of Indian schools and under the heading "Support of Schools," the following:

> "That the expenditure of money appropriated for school purposes under this Act shall be at all times under the supervision and direction of the Commissioner for Indian Affairs, and in all respects in conformity with such conditions, rules and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.
>
> "Provided, That the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper."

In his annual report for the fiscal year ending June 30, 1894, the Secretary of the Interior said:

> "The contract schools are now the subject of general discussion. I agree fully with those who oppose the use of public money for the support of sectarian schools. But this question should be considered practically. The schools have grown up. Money has been invested in their construction at a time when they were recognized as wise instrumentalities for the accomplishment of good. I do not think it proper to allow the intense feeling of opposition to sectarian education, which is showing itself all over the land, to induce the Department to disregard existing conditions. We need the schools now, or else we need a large appropriation to build schools to take their place.
>
> "It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the Department, and, unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%."

Congress, in pursuance of this recommendation, introduced for the first time in the Appropriation Act of 1895, Ch. 188 (28 Stat. at Large, page 888), a limitation on the use of public money in sectarian schools.

The Act appropriates, under the heading "Support of Schools," of the public moneys of the United States "for the support of Indian day and industrial schools and for other purpose" . . . $1,164,350." . . .

"Provided, that the Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June 30th, 1896, to an extent not exceeding 80% of the amount so used in the fiscal year 1895, and the Government shall, as early as practicable, make provision for the education of Indians in Government schools."

(See 28 State at Large, page 903.)

Congress, in the Indian Appropriation Act of 1896, Ch. 398, appropriated from the public moneys of the United States, under the head "Support of Schools," "for support of Indian day and industrial schools and for other educational purposes," . . . $1,235,000." . . . and then as a qualification upon the appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language in the act:

"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, that the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding 50% of the amount so used for the fiscal year 1895."

(See 29 Stat. at Large, page 345.)

Congress, in the Indian Appropriation Act of 1897, Ch. 3, appropriated from the public moneys of the United States, under the head of "Support of Schools," "for support of

Indian day and industrial schools, and for other educational purposes . . . $1,200,000 . . . ." and then as a qualification upon this appropriation, and following immediately thereupon, under the same heading, "Support of Schools," occurs the following language:

> "And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding 40% of the amount so used for the fiscal year 1895."
>
> (See 30 Stat. at Large, page 79.)

Congress, in the Indian Appropriation Act of 1898, Ch. 545, appropriated from the public moneys of the United States, under the head of "Support of Schools" "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000 . . . Provided, that the Secretary of the Interior may make contracts with contract schools apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year of 1899, but shall only make such contracts at such places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding 30% of the amount so used for the fiscal year 1895."

(See 30 Stat. at Large, page 587.)

Congress, in the Indian Appropriation Act of 1899, Ch. 324, appropriated from the public moneys of the United

States, under the head of "Support of Schools," "for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000, . . . Provided, that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where non-sectarian schools can not be provided for such Indian children, and to an amount not exceeding 15% of the amount so used for the fiscal year 1895, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools."

(30 Stat. at Large, page 942.)

Ths several Indian annual Appropriation Acts since 1899, to wit, beginning with 1900 to the present time, contain under the head of "Support of Schools" simply a general appropriation of public moneys "for the support of Indian and industrial schools, and for other educational purposes," without any proviso to any of them respecting contracts with sectarian schools, or without any statement in any of them of the policy of the Government with respect to the sectarian schools.

It will be observed that the phrase, "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," which is cited and relied on in paragraph 7 of the bill, is found only in the Indian Appropriation Acts of 1896 and 1897, and in no prior or subsequent Acts of Congress; that in these two Acts it is a limitation on the appropriation of public moneys, and is found only under the heading "Support of Schools," under which the public money of the United States is appropriated for support of Indian Schools, and does not occur in any other part of these Acts of Congress. The appellees, therefore, submit, that

this statement of policy, in so far as it can now have any legal effect, was intended only to apply to appropriations of public moneys for education in sectarian schools, and inasmuch as the appropriation of public moneys for these purposes was being reduced from year to year by a percentage which would make the last appropriation to be for the fiscal year ending June 30, 1900, there was no necessity for repeating the phrase containing the policy of the Government in any Acts after 1897. The cessation of the appropriation from the public moneys for education in the sectarian schools, was treated as the accomplishment of the purpose contained in the statement of the policy found in the Acts of 1896 and 1897.

This statement contains all the matter pertinent to the appropriation of public moneys for the support of education in sectarian schools. These appropriations ceased with the Indian Appropriation Act of 1899, have never been made since, nor is anyone asking that they should be made, or that any public moneys of the United States raised by taxation should be employed for such purposes (Record, pages 14-8).

## II.

### History of "Tribal Funds" and their Application for Educational Purposes Among Indians.

Entirely separate and apart from the public moneys which, as hereinbefore stated, were appropriated until 1900 for education in sectarian schools, there are other funds known as "Tribal Funds," which may be applied for these purposes. These funds the appellees respectfully submit are not public moneys gratuitously appropriated for public education among the Indians, but really belong to the Indians themselves. These tribal funds may be roughly grouped into two classes:

(*a*) Where cessions of land or other property have been made by the Indians, and in consideration thereof a certain

sum of money is deposited in the treasury of the United States, which is used for the Indians in the discretion of the Secretary of the Interior. These are called "Trust Funds."

(*b*) Where cessions of land or other property have been made by the Indians under treaties, and in consideration therefor the Government of the United States has by treaty bound itself to furnish money for the civilization and education of the Indians. These are called "Treaty Funds."

Examples of these funds are as follows:

Menominee Fund: Interest, $7,651.96 per annum (Treaty of 1848, Art. 5, 9 Stat. at Large, 952).

Menominee Log Fund: Interest, $76,313.98 per annum (Act of March 22, 1882, 22 Stat. at Large, 30; Act of June 12, 1890, 26 Stat. at Large, 146).

Osage Fund: Interest, $416,371.95 per annum (Treaty 1865, Art. 2, 14 Stat. at Large, 687; Act July 15, 1870, 16 Stat. at Large, 362; Act of June 16, 1880, 21 Stat. at Large, 292).

Osage Fund: Interest on $69,120, 5% (Treaty January 2, 1825, for educational purposes per Senate resolution, January 9, 1838, 7th Stat. at Large, 242).

The yearly amounts provided for the Indians under treaties are annually appropriated in the Indian Appropriation Acts, not in that part of the Act under the title "Support of Schools" wh[illegible] appropriated the public money of the United States, but under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes," for although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

But inasmuch as according to Indian custom, the property is held in common, and inasmuch as the Indians are regarded as wards of the nation, the money is not dis-

tributed per capita, but is expended for them, and for their benefit and advantage, under the discretion of the Secretary of the Interior. For some of the laws conferring this discretion, see 14th Stat., 687; 16 Stat., 362; 21 Stat., 292; 22 Stat., 30; 25 Stat., 895; 26 Stat. 146, 344.

As to the "Sioux Funds" directly in controversy, the facts are as follows:

*Sioux Trust Fund.*

On March 2, 1889, the Act of Congress of 1889, Ch. 405, was approved. This was entitled "An Act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian tribe to the remainder." Under this Act the Indians made certain cessions of land, and in partial consideration therefor it was provided in Section 17 of the Act as follows:

> "And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this Act in proportion to the number that shall so receive rations and annuities at the time that this takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments per capita, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support."
>
> 25 Stat. at Large, page 895.

This is the fund called the "Sioux Trust Fund" in the fifth paragraph of the bill.

The method of the payment of the interest on this fund was changed in 1880 by the Act of 1880, Chapter 41, as follows:

> "The Secretary of the Interior be, and he is hereby authorized to deposit in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds or other stocks and securities belonging to the Indian Trust Fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, and the United States shall pay interest semi-annually from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties, or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress."

This provision is partially cited in the bill in Paragraph 6.

*Sioux Treaty Fund.*

Under a treaty between the United States and different tribes of Sioux Indians made on April 29, 1868 (15 Stat. at Large, page 635), these Indians made large cessions of land and other rights, and in partial consideration therefor, the United States agreed with them as follows:

> "Art. VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be

settled on said agricultural reservations, and they, therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with, and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years."

By the Act of Congress of February 28, 1877, Ch. 72 (19th Stat. at Large, pages 254-6), ratifying an agreement with bands of Sioux nation, in consideration of further land cessions, it was provided :

"In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868."

By the seventeenth Section of the Act of 1889, Ch. 405 (25th Stat. at Large, 894), it was provided—

"that the 7th Article of the said treaty of April 29, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the Act shall take effect."

By the Act of 1905, Ch. 1479 (33 Stat. at Large, page 1048), entitled—

> "An Act making appropriations for current and contingent expenses of the Indian Department and for fulfiling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1906, and for other purposes"—

it was provided under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes," as follows:

> "For support of and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with Art. 7 of the treaty of April 29, 1868, which article was continued in force for twenty years by Section 17 of the Act of March 2, 1889, $225,000."

A similar appropriation has been annually made for many years back in the Indian Appropriation Acts.

This is the "Treaty Fund" in dispute, referred to in the 4th paragraph of the bill. (Record, pages 18-21.)

## III.

### Action of the Government as to the Application of Tribal Funds for Mission Schools.

Prior to 1900 the sectarian schools were aided by appropriations from the public moneys, and in the discretion of the Secretary of the Interior, from the tribal funds just described.

In 1900 not only the public appropriation ceased, as has been heretofore shown, but all aid from the tribal funds also ceased, except as to the Osage Treaty and trust funds hereinbefore referred to. At the request of the Osage Indians, their treaty funds have been annually and uninterruptedly applied to the Catholic mission schools under annual contract with the Commissioner of Indian Affairs, approved by the

Secretary of the Interior. With the exception of the Osage funds, no "Tribal Funds" were applied to education in denominational schools from 1900 to 1904 (Record, page 21).

In the meantime application was made to President McKinley by the "Bureau of Catholic Indian Missions" for the revocation of the "Browning Ruling" and the use of "Tribal Funds" for the education of the Catholic Indian children in Catholic schools.

On September 30, 1896, the then Commissioner of Indian Affairs, D. M. Browning, in answer to the question, "whether parents of Indian children have the right to decide where their children shall attend school," said :

> "It is your duty first to build up and maintain the Government day schools as indicated in your letter, and the Indian parents have no right to designate which school their children shall attend."

This was the "Browning ruling." It was ordered abrogated by President McKinley in 1901, and some eight months after, to wit : January 17, 1902, it was formally abrogated by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior (Record, page 21).

The question of the use of the "Tribal Funds" was referred by President McKinley to the Secretary of the Interior, and by him to the Commissioner of Indian Affairs, who decided adversely to the appropriation on February 12, 1901.

On or about January 1, 1904, the matter of the application for the use of "Tribal Funds" for the education of Indian children in Mission Schools was brought to the attention of President Roosevelt by the "Bureau of Catholic Indian Missions," who urged that the Indians should be allowed to use their own money in educating their own children in the schools of their choice.

President Roosevelt took up the matter on January 22, 1904, at a meeting in the Executive Office of the White House at which were present the Attorney-General (Mr. Knox) and Mr. Russell, of the Department of Justice, and Secretaries Hitchcock, Cortelyou and Wilson, and Postmaster-General Payne. The President was legally advised that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained.

The President decided that inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children as the schools of their choice.

A full and detailed statement of the action of the President in 1904 is set forth in his letter of February 3, 1905, which is herein set out at length :

"THE WHITE HOUSE,

WASHINGTON, *February 3, 1905.*

THE SECRETARY OF THE INTERIOR :

"I have received from you the letter of the Commissioner of Indian Affairs, of January 31, 1905, in relation to the inquiries of the Hon. James S. Sherman as to the authority for granting contracts for education of Indians in denominational schools. This letter of the Commissioner of Indian Affairs asks that the general questions raised in Mr. Sherman's letter of January 23d be united with the special question raised by the Commissioner in his letter of January 21st, and presented to the President for submission to the Attorney-General.

"The letter of January 21st, concerning the payment of a claim filed in the Office of Insular Affairs in connection with the contract with St. Labre School, on the Tongue River Reservation, stands by itself and will be submitted to the Attorney-General for his consideration and report.

"As regards the general question, I have received from the Attorney-General, under date of February 2d, a letter, a copy of which is enclosed. Early in 1902, petitions on behalf of various Catholic and Episcopal schools were brought to my attention by certain ecclesiastics and laymen, who requested the Interior Department to distribute the rations and annuities through the mission schools of their several churches when the children were in the care of those schools. The Attorney-General decided that this request was illegal and could not properly be granted. Over a year afterwards the request was made, originally on behalf of certain Catholic shools in 1903, also on behalf of a Lutheran school in 1904, that where there were Indian moneys held in trust for the Indians by the Secretary of the Interior, the interest on these Indian moneys being distributed among the individual Indians or in such other ways as the Secretary of the Interior might direct, and where certain of the Indians petitioned that the moneys so distributed to them should be used for the support of the particular denominational school which they desired their children to attend, this petition should be granted. The question raised was of course wholly different from that originally raised on behalf of the Episcopal Church and of the Catholic Church.

"This new request was submitted to the Department of Justice, and the Department decided, as set forth in the accompanying report, that the prohibition of the

law as to the use of public moneys for sectarian schools did not extend to moneys belonging to the Indians themselves, and not to the public, and that these moneys belonging to the Indians themselves might be applied in accordance with the desire of the Indians for the support of the schools to which they were sending their children. There was, in my judgment, no question that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children as the schools of their choice. Care must be taken, of course, to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled. But if these two conditions are fulfilled, it is, in my opinion, just and right that the Indians themselves should have their wishes respected when they request that their own money—not the money of the public—be applied to the support of certain schools to which they desire to send their children. The practice will be continued by the Department unless Congress should decree to the contrary, or, of course, unless the Courts should decide that the decision of the Department of Justice is erroneous.

"It is, however, greatly to be desired that the bill introduced by Representative Lacey and providing for permission to allot these annuities in severalty to the Indians, exactly as is now done with land, should be enacted into law. Its enactment and administration would prevent the rising of any question of this character, for each individual Indian would then be left free to use the money to which he is entitled outright on his own initiative instead of having it used for him by the

Secretary of the Interior in consequence of his petition. I earnestly hope that Congress will at once enact this bill into law.

"The special case of the St. Labre school stands by itself, the question being whether the contract entered into is one authorized by the finding of the Department of Justice in January, 1904, or whether it is one of those cases forbidden under the decision of the Department of Justice of January, 1902. The Attorney-General will speedily report the category in which this case comes.

THEODORE ROOSEVELT."

(Record, pages 22-3.)

The enclosure referred to is found on pages 23 to 26 of the Record.

Accordingly the following contracts were made by the United States with various sectarian organizations for the education of Indian children from "Tribal Funds" for the fiscal year ending June 30, 1905:

| Name of School. | Denomination. | Pupils. | Tribe. | Rate per annum. | Total for year. |
|---|---|---|---|---|---|
| St. Joseph | Catholic | 170 | Menominee | $108 | $18,360 |
| St. Louis | Catholic | 75 | Osage | 125 | 9,375 |
| St. John | Catholic | 65 | Osage | 125 | 8,125 |
| Immaculate Conception | Catholic | 65 | Sioux | 108 | 7,020 |
| Holy Rosary | Catholic | 200 | Sioux | 108 | 21,600 |
| St. Francis | Catholic | 250 | Sioux | 108 | 27,000 |
| St. Labre | Catholic | 60 | Northern Cheyenne | 108 | 6,480 |
| St. Mary | Catholic | 10 | Quapaw | 50 | 500 |
| Zoas' Boarding School | Lutheran | 40 | Menominee | 108 | 4,320 |
| Total | | 935 | | | $102,780 |

(Record, page 26.)

In June, 1905, the Commissioner of Indian Affairs was notified by the "Bureau of Catholic Indian Missions," that

it was prepared to care for and educate during the fiscal year ending June 30, 1906, Indian pupils at the several schools carried on by it among the Sioux, Menominee, Osage, Northern Cheyenne and Quapaw tribes upon the same terms and conditions as stipulated in its contracts for carrying on these schools for the fiscal year 1905, and requested that it be granted a renewal of the contracts in question, payable in each case from the trust and treaty funds of the tribe among which the school is located for the twelve months, beginning July 1, 1905.

To this application, the Commissioner replied that the request would receive careful consideration; that the applicability of the trust and treaty funds had been submitted to the proper authorities for a definite determination, and indicated how petitions should be prepared, and the safeguards under which the signature of the Indians should be made. Petitions were duly filed, signed under all these safeguards, by the Catholic Indians.

In the meantime, the schools were opened at the usual time and instruction given to the required number of pupils in the confidence that the contracts applied for would be renewed.

The Attorney-General not having rendered any decision in the matter, the President, by a letter dated December 23, 1905, addressed to the Commissioner of Indian Affairs, after quoting a part of his letter of February 3, 1905, hereinbefore referred to, said:

> "There are two kinds of Indian funds involved in this matter. One is the trust fund, which requires no appropriation by Congress, and which clearly is to be administered as the Indians themselves request. As regards this fund you will treat it on the assumption that the Indians have the right to say how it shall be used, so far as choosing the schools to which their children are to go is concerned; and each Indian is a tribe to be

credited with his *pro rata* share of the funds which you will apply for him to the Government school where that is the school used, or to the church school where that is the school used, instead of segregating any portion of the fund for the support of the Government school and prorating the balance.

"The other fund consists of moneys appropriated by Congress in pursuance of treaty stipulations. As to these moneys it is uncertain as to whether or not the prohibition by Congress of their application for contract schools applies—that is, whether or not we have the power legally to use these moneys as we clearly have the power to use the trust funds. It appears that certain of the contract schools are now being run in the belief that my letter quoted above authorized the use of the treaty funds. It would be a great hardship, in the absence of any clearly defined law on the subject, to cut them off at this time arbitrarily, and inasmuch as there is a serious question involved, I direct that until the close of the fiscal year these schools be paid for their services out of the moneys appropriated by Congress in pursuance of treaty obligations, on the same basis as the schools paid out of the trust funds—always exercising the precautions directed in my letter of February 3, 1905, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rate* proportion to which the Indians making the petition are entitled.' But no new contracts are to be entered into for such payments after the close of the present fiscal year, unless there is authorization by Congress or some determination by the Courts" (Record, page 27).

Accordingly, the contracts for the fiscal year ending June 30, 1905, hereinafter set forth, were renewed for the fiscal

year ending June 30, 1906, the new contracts being executed as of July 1, 1905.

The services have been performed under all these contracts and the money paid in all of them, except under the contract with the "Bureau of Catholic Indian Missions" for the education of 250 Indian pupils at St. Francis Mission School on the Rosebud Reservation. The payment of the $27,000 which is due under this contract has been withheld pending the decision by this Honorable Court as to validity of the contract and the appropriation of tribal funds for such purposes.

The contract for this $27,000 was made between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America and the "Bureau of Catholic Indian Missions," executed as of July 1, 1905, for the care, education and maintenance of 250 Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at $108 per capita per annum, amounting to $27,000. The contract was approved by Jesse E. Wilson, acting Secretary of the Interior.

Application for the contract was made by the "Bureau of Catholic Indian Missions" on June 6, 1905.

On March 26, 1906, a petition duly and genuinely signed by 212 members of the Sioux tribe of Indians of the Rosebud Agency, South Dahota, was filed, asking that the said contract applied for be entered into with the Bureau.

The payments under the contract were to be made from the "Sioux Trust Fund" and the "Sioux Treaty Fund," as hereinbefore described, in the discretion of the Commissioner of Indian Affairs."

There are 4,986 Indians on the rolls of the Rosebud Reservation, and the amount of tribal income applicable to education, in the discretion of the Commissioner, is—

$250,047.90, or a per capita of $50.15.

The 212 petitioners represent 669 shares, or $33,550.35, and of this they ask that $27,000 be used for the education of their children in St. Francis Mission School. The following table will represent the pro rata shares in these tribal funds, and the per capita share :

| | |
|---|---|
| 4,986 Indians, | $250,047.90 Tribal Funds $50.15 per capita. |
| 669 shares Petitions, | 33,550.35 Tribal Funds $50.15 per capita. |
| 4,317 Petitions (nonpetitions) | |
| 4,986 | $250,047.90 Tribal Funds $50.15 per capita. |

The cost of the Government school for the fiscal year was about $76,830. Since the shares of the petitioning Indians amount to $33,550.35 and the sum asked for the school is only $27,000 out of this share, and the petitions were genuinely signed, the terms of the executive order of President Roosevelt of February 3, 1905, *e. g.*, "to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled" have been strictly carried out.

The services under this contract have been fully performed to the satisfaction of the Commissioner of Indian Affairs, and the twenty-seven thousand dollars ($27,000) agreed to be paid is due and payable, if this Honorable Court determines that it is legally payable out of the "Sioux Trust Fund" and the "Sioux Treaty Fund" (Record, pages 28-9).

## IV.

### Action of the Federal Courts in the District of Columbia.

The validity of the contract for $27,000 above referred to, was attacked by a bill filed by the present appellants on May 11, 1906, in the Supreme Court of the District of Columbia against the present appellees (Record, pages 1-10).

The parties plaintiff, members of the Sioux tribe of Indians of the Rosebud Agency, in the State of South

Dakota, were only nominal plaintiffs, the real plaintiff being the Indian Rights Association, who had the suit brought for the purpose of testing the validity of the contract hereinbefore referred to.

The parties defendant are all officers of the Government of the United States, and are interested in the controversy only to the extent of ascertaining their duties in the premises. The real defendant is the "Bureau of Catholic Indian Missions," a Maryland corporation, with whom the aforesaid contract was made. It was for this reason that the President appointed special counsel to represent the real party in interest (Record, page 11).

The case was submitted on bill and answer, and also upon certain replies made by the Commissioner of Indian Affairs (Record, pages 31-6), and a stipulation that of the $27,000 involved in the contract about $24,000 would be payable out of the "Sioux Treaty Fund," and about $3,000 from the "Sioux Trust Fund" (Record, page 49).

The Supreme Court of the District of Columbia, by Ashley M. Gould, Justice, on April 15, 1907, decreed an injunction against paying any part of said $27,000 from the "Sioux Treaty Fund," but allowed payment from the "Sioux Trust Fund" (Record, page 47).

On appeal from the decree, the Court of Appeals of the District of Columbia, unanimously reversed the decision of Mr. Justice Gould, and decide that the contract was legal and payable from both funds. The opinion of the Court, by Mr. Justice Wright, is set forth in full in the record, pages 54-63. From this decision the present appeal is taken.

## V.

### The Legality of the Contract.

The appellants attack the validity of this contract on the ground that all contracts for sectarian education among the Indians are forbidden by certain provisos contained in the

Indian Appropriation Acts of 1895, 1896, 1897, 1898 and 1899. The appellees contend that these provisions have no application whatever to the "Tribal Funds" which belong to the Indians but relate only to the gratuitous appropriations made by the Government.

The solution of this question lies in a clear understanding of the essential difference between the public moneys of the United States raised by taxation from persons of all creeds and faiths, and appropriated gratuitously, as so finely expressed by the Court of Appeals, for the purpose of education among the Indians, and "Tribal Funds" which belong to the Indians themselves, and which should be used as they direct. Every man can readily understand the reasonableness of the objection of using public moneys raised by taxation from the Catholic, the Protestant, the Jew or the infidel, to support a Catholic School, and every man should also understand that a Catholic, even though an Indian, should not be prevented from having his own money expended in educating his children in Catholic Schools if he so desires. This essential difference in the nature of the two funds clears up and explains the whole controversy.

This difference is recognized, and has been recognized for many years by the annual Indian Appropriation Acts of Congress.

An examination of these annual Acts of Congress shows that the gratuitous appropriation of public moneys for the purposes of Indian education has always been made under the heading—"Support of Schools," whilst the appropriation of the "Treaty Fund," has always been under the heading—"Fulfilling Treaty Stipulations and Support of Indian Tribes," and the "Trust Fund" is not in the Indian Appropriation Acts at all.

These things are kept separate, not by accident or inadvertence, but because they are essentially different in their nature. One relates to public moneys belonging to the

Government; the other to moneys which belong to the Indians, and which is administered for them by the Government as a trustee or guardian.

## VI.

### Appropriations of Public Moneys for Education Among the Indians.

An examination of the provisos relied upon by the appellants will demonstrate that they were intended only to limit the use of public moneys for sectarian education. As appears from the statement of the case in this brief, before 1895, the government for a number of years, had made contracts with sectarian schools for the education of the Indians, and the money due on these contracts was paid in the discretion of the Commissioner of Indian Affairs, from the "Tribal Funds," and from the gratuitous public appropriations. But in 1894 opposition developed against appropriating public moneys for sectarian education. Accordingly in the Indian Appropriation Act of 1894, Ch. 290, under the heading of "Support of Schools," at the place where the public moneys of the government were appropriated for this purpose, the Secretary of the Interior was directed to investigate the propriety of discontinuing contract schools and to make such recommendations as he might deem proper (Record, page 15).

In reply to this, the Secretary of the Interior in his annual report for 1894, said: "I agree fully with those who oppose the USE OF PUBLIC MONEY for the support of sectarian schools,' but he suggested a gradual reduction in the public appropriations on account of the money which had been invested in these schools with the approbation of the government. He further said: "It would be scarcely just to abolish them entirely—to abandon instantly a policy so long recognized," by which he meant it would not be just to withdraw public appropriations from these schools which had grown up and

done so much good with the help of these appropriations. He continues: "My suggestion is that they should be decreased at the rate of not less than 20% a year. Thus in a few years they would cease to exist, and during this time the Bureau would be gradually prepared to do without them, while they might gather strength to continue WITHOUT GOVERNMENT AID. This is the policy which is now controlling the department, and, unless it is changed by legislation, it will be continued. THE DECREASE IN THE APPROPRIATION for the present fiscal year is 20%" (Record, page 15).

It is obvious thus far that all the Secretary of the Interior was dealing with, was the appropriation of the public moneys for sectarian education among the Indians. The matter was referred to him by virtue of a proviso in the Indian Appropriation Act, which dealt only with the appropriation of public moneys for "*Support of Schools*" among the Indians. He expresses his assent to the objection of those who opposed "*the use of public money for the support of Sectarian Schools.*" He suggests a decrease of 20% a year and expressly says that this is a decrease in the appropriation of public moneys, and indicates that the contract schools might gather strengh to continue "without *government aid.*" The whole thought here is concerned with the gradual decrease of the public appropriations for Sectarian Schools. There is not the remotest allusion to restricting the Indians in the use of their own moneys.

In accordance with this recommendation, Congress for the first time introduced in the appropriation Act of 1895, Ch. 188, a limitation on the use of public moneys in Sectarian Schools.

This Act appropriates under the heading "Support of Schools" of the public money of the United States "for the support of Indian day and Industrial Schools and for other purposes" . . . $1,164,350. . . .

"Provided that the Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June 30th, 1896, to an extent not exceeding 80% of the amount so used in the fiscal year 1895, and the Government shall as early as practicable, make provision for the education of Indians in Government Schools" (Record, page 15).

On the face of this statute it is obvious that Congress was dealing with the application of an appropriation of *public money* for education among the Indians. The sum appropriated was $1,164,350. Of this sum 80% was authorized to be expended with contract schools, as these were the schools which up to that time had educated the Indians. This 80% limitation was in precise accordance with the suggestion of the Secretary of the Interior. It is contained in a proviso to the appropriation of public money under the head of "Support of Schools." There is not the slightest reference to tribal funds.

In the Indian Appropriation Act of 1896, Ch. 398, under the same heading "Support of Schools," the appropriation of public money of $1,235.000, is limited by a proviso that contracts should only be made at places where non-sectarian schools can not be provided for Indian children to an amount not exceeding *50%* of the amount so used for the fiscal year 1895.

In this Act immediately after the appropriation of public money, as just recited, occurs the expression—"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school." This is the expression seized upon by the appellants as applicable to "Tribal Funds." But is it not obvious that it was intended to be a limitation only on the use of public moneys gratuitously appropriated

for such purpose? It is placed in the Act immediately in conjunction with such public appropriation, it does not refer in the remotest way to moneys belonging to the Indians themselves, and it is difficult under any consideration to give it any effect. For although by its terms it expresses a *settled policy* of the Government to "*hereafter*," which means, after 1896, to make no appropriation whatever for education in any sectarian school, we know perfectly well that Congress was then pursuing the policy suggested by the Secretary of the Interior, and intended to make appropriations, *even from the public moneys*, in 1897, 1898, and 1899, for sectarian education with a yearly reduction of about 20%.

Thus, in the Appropriation Act of 1897, the same declaration of policy occurs, as a limitation on the appropriation of public moneys, under the heading "Support of Schools," but the amount applicable to contract schools was limited to 40% of the amount used in 1895 (Record, page 16).

In the Act of 1898, the amount applicable to contract schools was limited to 30%, and in the Act of 1899, the amount so applicable was limited to 15%, with the significant addition of these words—"*this being the final appropriation for Sectarian Schools.*"

The expression of the settled policy of the Government, which was immediately unsettled by subsequent Acts, is found only in the Acts of 1896 and 1897.

Why was it not continued in the Acts of 1898 and 1899, both of which made appropriations of *public money* for sectarian education, if the phrase is to have the far reaching effect attributed to it by the appellants? The reason is simple. Congress was dealing only with the appropriation of public moneys for sectarian education. These appropriations were being reduced at the rate of 20% a year, so that in five years they would entirely cease. The policy of the Government would be entirely carried out, therefore, by introducing a rule of construction, that appropriations of public moneys

under the head of "Support of Schools," should mean, support of non-sectarian or Government schools, unless the application of such moneys to sectarian schools were expressly provided for. The application of such public moneys to sectarian schools was expressly provided for for five years only, at a yearly reduced rate, and the whole of such application stopped in 1900, by virtue of the provision in the Act of 1899, "*this being the final appropriation for sectarian schools.*"

All Acts since 1899 appropriate public moneys under the heading "Support of Schools" simply "for the support of Indian and industrial schools and for other educational purposes," without saying anything about sectarian schools (Record, page 17).

This means, of course, Government or non-sectarian schools. Why? Because of the rule of construction given those general words by the declaration of policy and the provisos already referred to in the Acts from 1895 to 1899.

When Congress by a declaration of policy decides against appropriations for sectarian education as a limitation in the application of moneys appropriated from the public funds, and specifically declares in 1899, that the appropriation thus made shall be the "final appropriation for sectarian schools," the effect of these declarations is to introduce a rule of construction in subsequent appropriations for education, making them to mean that sectarian schools are excluded from sharing in these appropriations unless expressly and in terms included. This is the only effect of the provisions cited. They are used as limitations in the use of public moneys appropriated gratuitously under the head of support of schools; and can have no other effect. Their purpose effectively achieved by the cessation of all appropriations of the public moneys for the use of sectarian schools.

And this is in accordance with the ordinary rules of statutory construction.

A proviso or exception as a general rule relates only to the paragraph or distinct portion of the enactment which immediately precedes it, and is to be confined by construction to the subject-matter of the section of which it is a part.

Savings Bank vs. Collector, 3 Wall. 495.
Henderson's Tobacco, 11 Wall. 658.
Dollar Savings Bank vs. U. S. 19 Wall. 227.

Of course there are exceptional cases where the word "proviso" is tantamount to "but" or "and," as when parties desirous of securing amendments to bills introduce them by the word "provided;" but such cases are easily distinguishable. If the "proviso" is germane to the section or clause to which it is attached, and is a limitation upon it, it would require the strongest reasons to wrench it from its grammatical and logical context and make it a limitation upon an entire statute.

## VII.

### The "Treaty Funds."

But the appellants rest their whole case upon their attempt to make these provisos and declarations of policy, attached as we have seen to the appropriation of public money to the "Support of Schools," applicable by construction to appropriations in fulfillment of treaty stipulations which are found in an entirely different part of the statutes and which are not public moneys at all in the sense in which these words have been used in this brief.

The statement of the case shows that in 1868 the United States made a treaty with the Sioux Indians. The Indians under this treaty made large cessions of lands and other rights. In consideration of this the United States agreed that for every thirty children a house should be provided, and a teacher competent to teach the elementary branches of our English education should be furnished for twenty years.

In 1877, in consideration of further land cessions, the United States agreed to furnish all necessary aid to assist the Indians in the work of civilization and furnish them schools and instruction in mechanical and agricultural arts as provided by the treaty of 1868.

In 1889 Congress extended the obligations of the treaty for twenty years subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education (Record, page 20).

Thereafter in every annual Indian Appropriation Act there was an appropriation to carry out the terms of this treaty under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes." Those appropriations are in a different part of the Act and rest upon entirely different grounds from the gratuitous appropriations of public moneys under the heading "Support of Schools."

For example, the Indian Appropriation Act of 1895 (28 St. 888), deals with many subjects under separate and appropriate headings. On page 879 appears the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes," under which heading the appropriation is made for carrying out the treaty of 1868, the "Treaty Fund" in dispute; and on page 903, nearly thirty pages removed from the first, is the distinct heading "Support of Schools," under which is contained the proviso relied upon by the appellants.

The same separate treatment of these two subjects is found in every appropriation Act.

Not only are these two classes of appropriations treated separately in each Act, but they should be as they are essentially different in character. One is the gratuitous appropriation of public money for the purpose of Indian education. As the money is public money raised by taxation from people of all or no creeds, it is rational to insist that it shall not be used for the teaching of a special form of religion.

But this "treaty fund" is not public money in this sense. It is money which belongs to the Indians themselves. It differs from the "Trust Fund" only in this: The "Trust Fund" has been set aside for the Indians and the income expended for their benefit. This expenditure of income requires no annual appropriation. The whole amount due the Indians for certain land cessions was appropriated in one lump sum, by the Act of 1889, Ch. 405.

This is held for the Indians and not distributed per capita, only because of the Indian Tribal custom of holding property in common. The Government is trustee for the Indians, and the money is distributed in accordance with the discretion of the Secretary of the Interior. The money really belongs to the Indians. It is the price of lands which they ceded to the Government. As to this "Trust Fund," no one, except counsel for the appellants, seem to have had any difficulty. The President of the United States declared it to be the moral right of the Indians to have this "Trust Fund" applied to the education of Indians in the schools of their choice (Record, page 23).

And so both the Supreme Court of the District of Columbia and the Court of Appeals in the District of Columbia decided.

Now the "Treaty Funds" have exactly the same characteristics. They are moneys belonging really to the Indians. They are the price of land ceded by the Indians to the Government. The only difference is that in the "Treaty Funds" the debt to the Indians created and secured by that highest of obligations, *a Treaty*, are paid in instalments. Instead of there being one appropriation, out of which afterwards the interest is paid, as in the "Trust Fund" there are annual appropriations. But this does not change the character of the appropriations. They are not gratuitous appropriations of public moneys. *They are payments of a treaty debt in instalments.* Like the payment of any other Government

obligation they must be paid through the means of an appropriation.

This being the case, what possible justification can there be for bringing a proviso or declaration of policy attached to a gratuitous appropriation of public money for the support of Indian schools, nearly thirty pages away in the same Act, and for applying it to the payment of treaty obligations. The two things are not connected together in the Act. They are distinct and different in nature. They have no relation with each other except that both are technically appropriations.

## VIII.

### The Constitutional Question.

Counsel for appellants endeavor to support their contention by invoking the Constitution of the United States.

The Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

We do not understand counsel for appellants to contend that this contract with the "Bureau of Catholic Indian Missions" to be unconstitutional. Indeed, it would be difficult to make such a contention in view of the appropriation for such purposes from almost the beginning of the government, the length of the contract school system, and the adjudications of the Federal Courts.

By the Act of March 3, 1897, making appropriations for the District of Columbia, Congress appropriated $30,000 for two isolating buildings to be constructed at the discretion of the Commissioners of the District on the grounds of two hospitals to be operated as a part of said hospitals. In the Act was this declaration:

> "And it is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding,

maintaining or aiding by payment for services, expenses or otherwise, any church or religious denomination or institution or society which is under sectarian or ecclesiastical control, and it is hereby enacted that from and after the 30th day of June, 1899, no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious denomination or to any institution or society which is under sectarian or ecclesiastical control."

(29 Stat. 683.)

This clause was supposed to have been passed with the view to carrying out the spirit of the First Amendment providing that Congress shall make no law respecting an estabment of religion or prohibiting the free exercise thereof.

The Commissioners made a contract with Providence Hospital, an institution owned and controlled by the Sisters of Charity, a monastic order of sisterhood of the Roman Catholic Church, for the erection of one of the isolating buildings provided for in the contract. In a proceeding to enjoin the Treasurer of the United States from paying out money under this contract on the ground of its being in violation of the statute in question and of the First Amendment, an injunction was granted in the lower Court (25 Wash. Law Rep., 85). On an appeal to the Court of Appeals this order was reversed, the Court saying:

"It is indeed difficult to conceive what effect this declaration or enactment can have in any event. Clearly, it cannot affect the appropriations of money that would be exhausted before it takes effect, and it can not bind the succeeding Congress when it comes to enact an appropriation bill for the year beginning July 1, 1898. It seems to be nothing more than a mere declaration of an abstract view of public policy that is not permitted to affect the operation of the Act which it

was made a part, and that can not, for obvious reasons, control or limit expenditures under specific appropriations which may be similarly itemized and designated in the Act of a succeeding Congress."

(Roberts vs. Bradfield, 12 App. Cas. 475.)

From the Court of Appeals the appellee therein appealed to the Supreme Court of the United States. In this Court the decision of the Court of Appeals was affirmed.

Bradfield vs. Roberts, 175 U. S. 291.

But although they do not claim that the contract is unconstitutional, they do contend that the spirit of the Constitution requires that the declaration of policy—"And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school"—should be taken from its immediate context and made applicable even to a technical appropriation to pay a treaty debt contained in another part of the Act.

If we understand their proposition, it is this: That the Constitution intended "to build a wall of separation between Church and State;" that therefore the actions of the United States must always be undenominational; that therefore the Government can never act in a sectarian capacity either in the use of its own funds or in that of the funds of others for whom it is a trustee; that therefore even the "Sioux Trust Fund" cannot be applied for education in Catholic schools, even though the owners of the funds so desire it.

With great respect we regard this as a most extraordinary contention. Here are funds belonging to Catholic Indians being administered by the government for their use. These Indians believe as the Catholic Caucasians believe, that the most important part of the education of their children, is their education in the Catholic religion in Catholic schools. They have the money to pay for it, and they ask that the

money be so applied. They are told that they cannot use their own money to educate their children in the schools of their own choice, because the government must act in an undenominational way. But is it undenominational to prevent a Catholic Indian from educating his children with his own funds in a Catholic school? Is it not on the contrary a direct interference with his religious rights? It is almost as bad as the Browing ruling abolished by President McKinley which forbade the Catholic Indian parent from choosing a Catholic education for his children. It is a patent invasion of the parental right to educate his children according to the obligations of his own conscience. This thought was strongly expressed by the Court of Appeals when they say—

> "The 'Treaty' and 'Trust' moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended for their benefit and in part for their education; it seems inconceivable that Congress should have intended to prohibit them from receiving religious education at their own cost if they so desire it; such an intent would be one 'to prohibit the free exercise of religion' amongst the Indians, and such would be the effect of the construction for which the complainants contend" (Record, page 62).

No. The policy to make no appropriation for education in sectarian schools simply means that Indians shall not be educated in religious schools gratuitously at the cost of public donations, and does not mean that the religious Indian should be deprived of the liberty of educating his children in a school of his own choice at the cost of his own money (Record, page 61).

The Catholic Indians are not asking for Government aid. They are simply asking to be protected in their liberty of conscience. They desire to fulfill what to them are conscientious obligations in the very important matter of the education of their children; and the Government of the United States is the last Government in the world to deny them the right to use their own funds for such a purpose.

## IX.

### Aids to Interpretation.

Sometimes light is shed upon the question of the proper interpretation of an Act of Congress by showing what Congress did or refused to do subsequently with reference to the question in dispute.

Now it is clear that since 1900 attempts have been made in Congress to prevent the application of these "Treaty" and "Trust" funds to religious schools, but these attempts have failed, that discrimination against Mission Schools in the distribution of rations has been forbidden, and that direct application of funds received from royalties from gas and oil has been made by Congress to religious schools in the Osage Indian Reservation.

On December 13, 1905, Mr. Stephens introduced in the House of Representatives the following bill:

> "A Bill to Prohibit the Use of Indian Trust Funds for the Purpose of Educating Indian Children in Sectarian Schools.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in the administration and disbursement of funds held in trust for the Indian tribes by the United States that part of the Act of June 7, 1897 (Thirteenth Statutes, page 79), which provides, 'and it is hereby declared to be the settled policy of the Government to hereafter

make no appropriation whatever for education in any sectarian school,' shall apply to any trust fund or interest thereon held by this Government for the benefit of any Indian tribes by the United States, and no such trust funds shall be appropriated or used for purposes of education in any sectarian or denomination school so long as such trust fund belongs to any Indian tribe."

The bill did not pass, but was laid on the table in the Committee on Indian Affairs, to whom it had been referred (Record, page 29).

When the Senate of the United States was considering the Indian Appropriation Bill for the fiscal year ending June 30, 1906, it passed an amendment reported by the Committee on the District of Columbia as amended by Senator McCumber.

The original amendment was in these words:

"That no portion of the funds appropriated by this Act, nor the principal nor interest of any Indian Trust or Tribal Funds held by the United States for the benefit of any Indian tribe shall be available, nor be expended for the support of any sectarian or denominational school."

This amendment was not passed by the Senate in this form, but as amended by Senator McCumber as follows:

"Provided, however, that the individual owner or beneficiary of any interest in such fund who may desire to educate his ward, child or children in any school other than a Government school, may, by written order signed by him, direct that any portion of the interest accruing to him, or which would be allotted to him on such fund, be paid to the school in which such ward, child or children may be educated."

No part of the amendment, however, was passed by Congress, the whole being eliminated from the bill in conference committee, whose report was adopted (Record, page 30).

On February 10, 1902, there was a decision by the then Attorney-General that the rations to which the Sioux Indians were entitled under the agreement ratified by Act of Congress of February 28, 1877 (19th Stat. L., 254), could not be distributed to children in the mission schools.

The effect of this was that rations were distributed to children who remained at home in ignorance and away from school, and were also distributed to children who attended Government schools, but those children who attended mission schools were deprived of the rations.

In the Indian Appropriation Act for the fiscal year ending June 30, 1907, Congress enacted as follows:

> "Mission schools on an Indian reservation, may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulation if such children were living with their parents."

Congress, by an Act approved June 28, 1906, "for the division of land and funds of the Osage Indians in Oklahoma Territory and for other purposes," enacted, among other things, as follows:

> "There shall be set aside from the royalties received from oil and gas not to exceed fifty thousand dollars per annum for ten years from the first day of January, nineteen hundred and seven, for the support of the Osage Boarding School, and for other schools on the Osage Indian Reservation conducted, or to be established, and conducted for the education of Osage children."

There are three schools on the Osage Indian Reservation conducted for the education of Osage children: The Osage Boarding School, the St. Louis School for Girls, and the St. John School for Boys; the first is a Government school, the latter two are Catholic Mission Schools, for whom, as hereinbefore stated, contracts have been made uninterruptedly for a great number of years for the education of Indian children of the Osage tribe, payable out of Osage Treaty Funds (Record, page 30).

It is therefore respectfully submitted that the decision of the Court of Appeals of the District of Columbia should be affirmed.

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# REUBEN QUICK BEAR *v.* LEUPP, COMMISSIONER OF INDIAN AFFAIRS.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 569. Argued February 26, 27, 1908.—Decided May 18, 1908.

A statutory limitation on expenditures of the public funds does not, in the absence of special provision to that effect, relate to expenditures of treaty and trust funds administered by the Government for the Indians.

The provisions in the Indian Appropriation Acts of 1895, 1896, 1897, 1898 and 1899 limiting and forbidding contracts for education of Indians in sectarian schools relate only to appropriations of public moneys raised by general taxation from persons of all creeds and faith and gratuitously appropriated and do not relate to the disposition of the tribal and trust funds which belong to the Indians—in this case the Sioux Tribe—themselves, and the officers of the Government will not be enjoined from carrying out contracts with sectarian schools entered into on the petition of Indians and to the *pro rata* extent that the petitioning Indians are interested in the fund.

A declaration by Congress that the Government shall not make appropriations for sectarian schools does not apply to Indian treaty and trust funds on the ground that such a declaration should be extended thereto under the religion clauses of the Federal Constitution.

35 Washington Law Reporter, 766, affirmed.

THE appellants filed their bill in equity in the Supreme Court of the District of Columbia, alleging that:

"1. The plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians of the Rosebud Agency, in the State of South Dakota, and bring this suit in their own right as well as for all other members of the Sioux tribe of Indians of the Rosebud Agency.

"2. The defendants are citizens of the United States and residents of the District of Columbia, and are sued in this action as the Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of

the United States, and the Comptroller of the Treasury respectively.

"3. That by artide VII of the Sioux treaty of April 29, 1868 (15 Stat. 635, 637), continued in force for twenty years after July 1, 1889, by section 17 of the act of March 2, 1889, c. 405, 25 Stat. 888, 894–5, the United States agreed that for every thirty children of the said Sioux tribe who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education, shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher.

"4. That for the purpose of carrying out the above provision of the said treaty during the fiscal year ending June 30, 1906, the following appropriation was made by the act of March 3, 1905, section 1 (33 Stat. 1048, 1055):

"'For support and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with artide seven of the treaty of April twenty-nine, eighteen hundred and sixty-eight, which article is continued in force for twenty years by section seventeen of the act of March second, eighteen hundred and eighty-nine, two hundred and twenty-five thousand dollars.'

"The fund so appropriated is generally known as the Sioux treaty fund.

"5. That section 17 of the said act of March 2, 1889, further provides as follows:

"'And in addition thereto there shall be set apart out of any money in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall

so receive rations and annuities at the time that this act takes effect, as follows: one-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments *per capita* as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.'

"This fund of three million dollars is generally known as the Sioux trust fund.

"6. That the interest on the said Sioux trust fund is paid annually by the United States in accordance with the provisions of the second clause of the act of April 1, 1880, c. 41, 21 Stat. 70, reading as follows:

"'And the United States shall pay interest semi-annually, from the date of the deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.'

"7. That the act of June 7, 1897, c. 3, § 1, 30 Stat. 62, 79, contains the following provision:

"'And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school.'

"8. That, in violation of the said provision of the act of June 7, 1897, the said Francis E. Leupp, Commissioner of Indian Affairs as aforesaid, has made or intends to make, for and on behalf of the United States, a contract with the Bureau of Catholic Indian Missions of Washington, D. C., a sectarian organization, for the care, education, and maintenance, during the fiscal year ending June 30, 1906, of a number of Indian pupils of the said Sioux tribe, at a sectarian school on the said Rosebud Reservation, known as the St. Francis Mission Boarding School, and in the said contract has agreed to pay or intends to agree to pay to the said Bureau of Catholic Indian

Missions of Washington, D. C., a certain rate per quarter as compensation for every pupil in attendance at the said school under the said contract, the said payment (which, as the plaintiffs are informed and believe, will amount to the sum of twenty-seven thousand dollars), to be made either from the said Sioux treaty fund or from the interest of the said Sioux trust fund or from both.

"9. That all payments made to the said Bureau of Catholic Indian Missions of Washington, D. C., under the said contract, either out of the said Sioux treaty fund or out of the interest of the said Sioux trust fund, will be payments for education in a sectarian school, and will be unlawful diversions of funds appropriated by Congress, and in violation of the above-recited provision of the act of June 7, 1897, and such payments will seriously deplete the interest of said Sioux trust fund, to the great injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will unlawfully diminish the amount of money which should be expended out of the said Sioux treaty fund and the interest of the said Sioux trust fund for lawful purposes, for the benefit of the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency, and will also unlawfully diminish the cash payments which the said plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive *per capita* out of the interest of the said Sioux trust fund.

"10. That the plaintiffs have never requested nor authorized the payment of any part of the said Sioux treaty fund, or of the interest of the said Sioux trust fund, to the said Bureau of Catholic Indian Missions of Washington, D. C., or any other person or organization whatever, for the education of Indian pupils of the said Sioux tribe in the said St. Francis Mission Boarding School, or any other sectarian school whatever, but have on the contrary protested against any use of either of the said funds, or the interest of the same, for the purpose of such education.

"11. That the plaintiffs have no remedy at law.

"Wherefore the plaintiffs ask relief, as follows:

"I. That a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, to restrain him from executing any contract with the said Bureau of Catholic Indian Missions of Washington, D. C., or any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, and that a permanent injunction issue against the said Francis E. Leupp, Commissioner of Indian Affairs, and the said Ethan Allen Hitchcock, Secretary of the Interior, to restrain them from paying or authorizing the payment of either by themselves or by any of their subordinate officers or agents whatever, any moneys of either the said Sioux treaty fund or the interest of the said Sioux trust fund, or any other fund appropriated, either by permanent appropriation or otherwise for the uses of the said Sioux tribe, to the said Bureau of Catholic Indian Missions of Washington, D. C., or to any other sectarian organization whatever, for the support, education, or maintenance of any Indian pupils of the said Sioux tribe, at the said St. Francis Mission Boarding School or any other sectarian school on the said Rosebud Reservation or elsewhere."

II. And for a permanent injunction against the drawing, countersigning and paying "any warrants in favor of the said Bureau of Catholic Indian Missions of Washington, D. C., or any other sectarian organization whatever, for the support, education, and maintenance of any Indian pupils of the said Sioux tribe at the said St. Francis Mission Boarding School, or any other sectarian school on the said Rosebud Reservation or elsewhere, payable out of any money appropriated, either by permanent appropriation or otherwise, for the uses of the said Sioux tribe."

III. And for general relief.

The defendants answered, 1. Admitting "that the plaintiffs are citizens of the United States, and members of the Sioux tribe of Indians, but aver that the said Indians are only nominal plaintiffs, the real plaintiff being the Indian Rights Association, who have had this suit brought for the purpose of testing the validity of the contract hereinafter referred to."

2. Admitting "that they are residents of the District of Columbia, and are sued in this action as Commissioner of Indian Affairs, the Secretary of the Interior, the Secretary of the Treasury, the Treasurer of the United States, and the Comptroller of the Treasury, respectively. These defendants, as officers of the Government of the United States, have no interest in the controversy raised by the bill, except to perform their duties under the law, and they, therefore, as such officers, respectfully submit the validity of the contract hereinafter referred to, and the payments thereunder, to the judgment of this honorable court. The real defendant in interest is the 'Bureau of Catholic Indian Missions,' a corporation duly incorporated by chapter 363 of the Acts of Assembly of Maryland for the year 1894, for the object, *inter alia*, of educating the American Indians directly and also indirectly by training their teachers and others, especially to train their youth to become self-sustaining men and women, using such methods of instruction in the principles of religion and of human knowledge as may be best adapted to these purposes.

"As the object of the bill filed is to test the validity of a contract made between the Commissioner for Indian Affairs and the said 'Bureau of Catholic Indian Missions,' and the validity of the payment of the money thereunder, this answer will set forth the facts and the statutes of the United States under which it is contended that such contract and the payment of money thereunder are valid."

This the answer then did at length, and inasmuch as the case was submitted on bill and answer with certain statements of the Commissioner of Indian Affairs, it is thought that the an-

swer should be given substantially in full as it is in the margin.[1]

The case was heard on the bill, the answer and "certain

[1] "3. These defendants admit the allegations of paragraph 3 of the bill, but the pertinent part of the Sioux treaty of April 29, 1868, is only partially stated therein. The full statement of that part of the Sioux treaty will be hereinafter made.

"4. These defendants admit the allegations of paragraph 4 of the bill.

"5. These defendants admit the allegations in paragraph 5 of the bill, but aver that though the provision from section 17 of the act of March 2, 1889, is correctly stated, as far as it goes, there are other portions of said act which should be called to the attention of the court, which is accordingly done hereafter in this answer.

"6. These defendants admit the allegations in paragraph 6 of the bill, but aver, that although clause 2 of the act of April, 1880, is correctly stated, as far as it goes, there are other provisions of law to be called to the attention of the court in this connection, which is accordingly done in the subsequent part of this answer.

"7. These defendants admit the allegations in paragraph 7 of the bill, but aver that, although the provision in the act of June 7, 1897, sec. 1, is correctly stated as far as it goes, the section is not fully stated, nor are other parts of the act referred to which bear directly on the question raised by the bill.

"8. These defendants admit that within the meaning of the acts of Congress the 'Bureau of Catholic Indian Missions' is a sectarian organization, and the industrial school known as the 'St. Francis Mission Boarding School,' on the Rosebud Reservation, is a sectarian school.

"These defendants further say that a contract was made by and between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and the 'Bureau of Catholic Indian Missions,' for the care, education, and maintenance during the fiscal year ending June 30, 1906, of 250 Indian pupils of the Sioux tribe of Indians, at the industrial school known as St. Francis Mission Boarding School, on the Rosebud Reservation, and by such contract it was agreed that there should be paid to the 'Bureau of Catholic Indian Missions' twenty-seven dollars ($27) per quarter for every pupil in attendance, provided there should not be paid under the contract a sum aggregating more than twenty-seven thousand dollars ($27,000). This amount, according to the contract, was to be paid from either or all of the funds of the Sioux tribe of Indians, designated technically as 'Interest on Sioux Fund,' 'Education Sioux Nation,' and 'Support of Sioux of different tribes, subsistence, and civilization,' all of which, however, are embraced in the two funds stated in the bill, to wit, the 'Sioux Treaty Fund,' described in paragraph 4 of the bill and the 'Sioux Trust Fund,' described in paragraph 5 of the bill.

"This contract has been fully performed by the 'Bureau of Catholic In-

proofs, consisting of replies made by the Commissioner of Indian Affairs to certain questions asked in behalf of the plaintiffs, and also of certain statements in the reports of the

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dian Missions' and there is due to it thereunder from the said funds the total amount of twenty-seven thousand dollars ($27,000) if the said contract was legally made. This contract was approved by the Acting Secretary of the Interior, Mr. Jesse E. Wilson, by direction of the President of the United States, but, by the same direction, no payments have been made under it in order that the validity of the contract might be determined by the courts of the United States. The circumstances under which this contract was entered into and approved are hereinafter more fully stated.

"These defendants deny the allegation in paragraph 8 of the bill that this contract was made in violation of the act of June 7, 1897, or in violation of any other act of Congress.

"9. These defendants admit that payments under this contract will be payments for education in a sectarian school, as the term 'sectarian school' is defined in the acts of Congress, but they deny that said payments will be in violation of the act of June 7, 1897, and they further deny that such payments will deplete the interest of said 'Sioux Trust Fund' to the injury of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that such payments will unlawfully diminish the amount of money which should be expended out of the said 'Sioux Treaty Fund,' and the interest of the 'Sioux Trust Fund' for lawful purposes for the benefit of the plaintiffs and all other members of the said Sioux tribe of Indians of the Rosebud Agency; and they further deny that said payments will also unlawfully diminish the cash payments which the said plaintiffs and other members of the said Sioux tribe of Indians of the Rosebud Agency are entitled to receive per capita out of the interest of the said 'Sioux Trust Fund,' as alleged in paragraph 9 of said bill; all of which will more fully and at large appear by the detailed statements in this answer hereinafter made.

"10. These defendants admit that the plaintiffs, to wit, the three Indians whose names appear as plaintiffs in the caption of this bill, have never requested or authorized the payment of any part of the Sioux treaty or trust fund to the said 'Bureau of Catholic Indian Missions,' or any other person or organization whatever for the education of Indian pupils of the said Sioux tribe in said 'St. Francis Mission Boarding School,' or any other sectarian boarding school whatever, but on the contrary, these defendants admit that the said plaintiffs protest against any use of either of the said funds, or the interest of the same, for the purpose of such education, as stated in paragraph 10 of the bill.

"11. But now these defendants further answering say, that although they have answered in terms all the allegations in all the paragraphs of the bill contained, it is necessary for a full understanding of the rights of the parties, that all the pertinent facts connected with the use of money under

Commissioner of Indian Affairs for the years 1895 and 1906, inclusive," and was argued by counsel, and upon consideration an injunction was decreed from "paying or authorizing the payment of, either by themselves or by any of their subordinate

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the contract of the United States for the education of the Indians in contract schools which are sectarian within the meaning of the acts of Congress should be stated, so that in the light of all these facts, only a few of which are stated in the bill, the legality of the contract assailed may be judicially determined.

"12. The Catholic Missions schools were erected many years ago at the cost of charitable Catholics, and with the approval of the authorities of the Government of the United States, whose policy it was then to encourage the education and civilization of the Indians through the work of religious organizations. Under the provisions of the act of 1819, ten thousand dollars ($10,000) were appropriated for the purpose of extending financial help 'to such associations or individuals who are already engaged in educating the Indians,' as may be approved by the War Department.

"In 1820, twenty-one schools conducted by different religious societies were given eleven thousand, eight hundred and thirty-eight dollars ($11,838), and from that date until 1870, the principal educational work in relation to the Indians was under the auspices of these bodies, aided more or less by the Government. For a long time the different denominational schools referred to were aided by the Government without any formal contract.

"In 1870, an act of Congress was passed appropriating one hundred thousand dollars ($100,000) for the support of Indian schools among Indian tribes not otherwise provided for, *i. e.*, among tribes not having treaty stipulations providing funds for educational purposes, and these appropriations continued until 1876. Contracts were made annually with the mission schools of the different denominations payable out of this appropriation for the education of Indian pupils. As to the tribes having funds for educational purposes under treaty stipulations, contracts were also made with the mission schools of the different denominations payable out of the treaty funds. In 1876, Congress began the general appropriation 'for the support of industrial schools and other educational purposes for the Indian tribes,' and these annual appropriations from the public moneys of the United States have been—from that time until the present. These appropriations always were put in the appropriation acts under the heading 'Support of Schools'—and from these public funds, and, in the discretion of the Commissioner of Indian Affairs, from the tribal funds hereinafter explained, were paid the amounts due under the contracts made by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, with the various denominational schools for the education of Indian pupils.

"Some time before 1895 opposition developed to these contracts with denominational schools, on the ground that the public moneys of the United

officers or agents whatever, any moneys of the Sioux treaty fund, referred to in the said bill and answer, appropriated for the uses of the Sioux tribe of Indians, to the Bureau of Catholic Indian Missions, at Washington, D. C., for the support, edu-

States raised by taxation should not be used for education in sectarian institutions; and also for other reasons.

"Accordingly there is found in the appropriation act of 1894, ch. 290 (28 Statutes at Large, p. 311) approved August 15, 1894, in that part of the act appropriating the public moneys for the support of Indian schools and under the heading 'Support of Schools,' the following:

"'That the expenditure of money appropriated for school purposes under this act shall be at all times under the supervision and direction of the Commissioner for Indian Affairs and in all respects in conformity with such conditions, rules, and regulations as to the conduct of and methods of instruction and expenditure of money as may, from time to time, be prescribed by him, subject to the approval of the Secretary of the Interior.

"'Provided, that the Secretary of the Interior is hereby directed to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress at the next session the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools, together with such recommendations as he may deem proper.'

"In his annual report for the fiscal year ending June 30, 1894, the Secretary of the Interior said:

"'The contract schools are now the subject of general discussion. I agree fully with those who oppose the use of public money for the support of sectarian schools. But this question should be considered practically. The schools have grown up. Money has been invested in their construction at a time when they were recognized as wise instrumentalities for the accomplishment of good. I do not think it proper to allow the intense feeling of opposition to sectarian education, which is showing itself all over the land, to induce the de[illegible]ment to disregard existing conditions. We need the schools now, or e[illegible]e need a large appropriation to build schools to take their place.

"'It would scarcely be just to abolish them entirely—to abandon instantly a policy so long recognized. My own suggestion is that they should be decreased at the rate of not less than 20% a year. Thus, in a few years more, they would cease to exist, and during this time the bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid. This is the policy which is now controlling the department, and, unless it is changed by legislation, it will be continued. The decrease in the appropriation for the present fiscal year is 20%.'

"Congress, in pursuance of this recommendation, introduced for the first

cation or maintenance of any Indian pupils of the said Sioux tribe, at the St. Francis Mission Boarding School on the Rosebud Reservation in the State of South Dakota, as provided

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time in the appropriation act of 1895, ch. 188 (28 Stat. at Large, 888), a limitation on the use of public money in sectarian schools.

"The act appropriates, under the heading 'Support of Schools,' of the public moneys of the United States 'for the support of Indian day and industrial schools and for other purposes ( . . . $1,164,350. . . .).

"'Provided, that the Secretary of the Interior shall make contracts, but only with the present contract schools, for the education of Indian pupils during the fiscal year ending June 30, 1896, to an extent not exceeding 80% of the amount so used in the fiscal year 1895, and the Government shall, as early as practicable, make provision for the education of Indians in Government schools.' (See 28 Stat. at Large, 903.)

"Congress, in the Indian appropriation act of 1896, ch. 398, appropriated from the public moneys of the United States, under the head 'Support of Schools,' 'for support of Indian day and industrial schools and for other educational purposes, . . . $1,235,000, . . .' and then as a qualification upon the appropriation, and following immediately thereupon, under the same heading, 'Support of Schools,' occurs the following language in the act:

"'And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, that the Secretary of the Interior may make contracts with contract schools and apportioning, as near as may be, the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1897, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding 50% of the amount so used for the fiscal year 1895.' (See 29 Stat. at Large, p. 345.)

"Congress, in the Indian Appropriation Act of 1897, ch. 3, appropriated from the public moneys of the United States, under the head of 'Support of Schools,' 'for support of Indian day and industrial schools, and for other educational purposes . . . $1,200,000 . . .' and then as a qualification upon this appropriation, and following immediately thereupon, under the same heading, 'Support of Schools,' occurs the following language:

"'And it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school. Provided, the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1898, but shall only make such contracts at places where non-sectarian schools cannot be provided for such Indian children, and to an amount not exceeding 40% of the amount so used for the fiscal year 1895.' (See 30 Stat. at Large, p. 79.)

in the contract referred to in said bill and answer, and that the defendants be further restrained from drawing, countersigning and paying any warrants in favor of the said Bureau of Catholic

"Congress, in the Indian Appropriation Act of 1898, ch. 545, appropriated from the public moneys of the United States, under the head of 'Support of Schools,' for 'support of Indian day and industrial schools, and for other educational purposes . . . $1,100,000 . . . Provided, that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year of 1899, but shall only make such contracts at such places where nonsectarian schools cannot be provided for such Indian children, and to an amount not exceeding 30% of the amount so used for the fiscal year 1895.' (See 30 Stat. at Large, p. 587.)

"Congress, in the Indian Appropriation Act of 1899, ch. 324, appropriated from the public moneys of the United States, under the head of 'Support of Schools,' 'for support of Indian day and industrial schools, and for other educational purposes, . . . $1,100,000 . . . Provided, that the Secretary of the Interior may make contracts with contract schools, apportioning as near as may be the amount so contracted for among schools of various denominations for the education of Indian pupils during the fiscal year 1900, but shall only make such contracts at places where nonsectarian schools cannot be provided for such Indian children, and to an amount not exceeding 15% of the amount so used for the fiscal year 1895, the same to be divided proportionately among the said several contract schools, this being the final appropriation for sectarian schools.' (See 30 Stat. at Large, p. 942.)

"The several Indian annual appropriation acts since 1899, to wit, beginning with 1900 to the present time, contain under the head of 'Support of Schools' simply a general appropriation of public moneys 'for the support of Indian and industrial schools, and for other educational purposes,' without any proviso in any of them respecting contracts with sectarian schools, or without any statement in any of them of the policy of the Government with respect to sectarian schools.

"It will be observed that the phrase, 'and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school,' which is cited and relied on in paragraph 7 of the bill, is found only in the Indian appropriation acts of 1896 and 1897, and in no prior or subsequent acts of Congress; that in these two acts it is a limitation on the appropriation of public moneys, and is found only under the heading 'Support of Schools,' under which the money of the United States is appropriated for support of Indian schools, and does not occur in any other part of these acts of Congress. These defendants, therefore, submit, that this statement of policy, in so far as it can now have any legal effect, was intended only to apply to appropriations of public

Indian Missions, for the purpose aforesaid, payable out of the said Sioux treaty fund; and

"It is further ordered, adjudged and decreed that so much of the prayer of the said bill as asks that an injunction issue

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moneys for education in sectarian schools, and inasmuch as the appropriation of public moneys for these purposes was being reduced from year to year by a percentage which would make the last appropriation to be for the fiscal year ending June 30, 1900, there was no necessity for repeating the phrase containing the policy of the Government in any acts after 1897. The cessation of the appropriation from the public moneys for education in the sectarian schools, was treated as the accomplishment of the purpose contained in the statement of the policy found in the acts of 1896 and 1897.

"The above paragraph contains all the matter pertinent to the appropriation of public moneys for the support of education in sectarian schools. These appropriations ceased with the Indian appropriation act of 1899, have never been made since, nor is any one asking that they should be made, or that any public moneys of the United States raised by taxation should be employed for such purposes.

"13. But these defendants, further answering, say that entirely separate and apart from the public moneys which, as stated in paragraph 12 of this answer, were appropriated until 1899 for education in sectarian schools, there are other funds known as 'Tribal Funds' which may be applied for these purposes. These funds these defendants respectfully submit, are not public moneys, but really belong to the Indians themselves, and it is the purpose of this paragraph of this answer to give a general account of these funds, and a particular account of the 'Tribal Funds' of the Sioux Indians which are directly in controversy in this case will be given in the next paragraph.

"These 'Tribal Funds' may be roughly grouped into two classes: (*a*) Where cessions of land or other property have been made by the Indians, and in consideration thereof a certain sum of money is deposited in the Treasury of the United States, which is used for the Indians in the discretion of the Secretary of the Interior. These are called 'Trust Funds.' (*b*) Where cessions of land or other property have been made by the Indians under treaties, and in consideration therefor the Government of the United States has by treaty bound itself to furnish money for the civilization and education of the Indians. These are called 'Treaty Funds.'

"Examples of these funds are as follows:

"Menominee Fund: Interest, $7,651.96 per annum (Treaty of 1848, Art. 5, 9 Stat. at Large, 952).

"Menominee Log Fund: Interest, $76,313.98 per annum (Act of March 22, 1882, 22 Stat. at Large, 30; Act of June 12, 1890, 26 Stat. at Large, 146).

"Osage Fund: Interest, $416,371.95 per annum (Treaty 1865, Art. 2, 14 Stat. at Large, 687; Act July 15th, 1870, 16 Stat. at Large, 362; Act of June 16, 1880, 21 Stat. at Large, 292).

against the defendants restraining them from paying or authorizing the payment of any of the interest of the Sioux trust fund to the said Bureau of Catholic Indian Missions under the said contract, be refused; and

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"Osage Fund: Interest on $69,120, 5% (Treaty Jan. 2d, 1825, for educational purposes per Senate resolution, Jan. 9, 1838, 7th Stat. at Large, 242).

"The yearly amounts provided for the Indians under treaties are annually appropriated in the Indian appropriation acts, not in that part of the act under the title 'Support of Schools' which appropriated the public money of the United States, but under the heading 'Fulfilling Treaty Stipulations with and support of Indian Tribes,' for although formally appropriated the moneys are not regarded as the moneys of the United States, but moneys belonging to the Indians, due to them under treaties in consideration of their cession of lands and other rights.

"But inasmuch as according to Indian custom, the property is held in common, and inasmuch as the Indians are regarded as wards of the Nation, the money is not distributed *per capita*, but is expended for them, and for their benefit and advantage, under the discretion of the Secretary of the Interior. For some of the laws conferring this discretion, see 14th Stat. 687; 16 Stat. 362; 21 Stat. 292; 22 Stat. 30; 25 Stat. 895; 26 Stat. 146, 344.

"14. As to the 'Sioux funds' directly in controversy, the facts are as follows:

"On March 2, 1889, the act of Congress of 1889, ch. 405, was approved. This was entitled 'An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations, and to secure the relinquishment of the Indian tribe to the remainder.' Under this act, the Indians made certain cessions of land, and in partial consideration therefor it was provided in section 17 of the act as follows:

"'And in addition thereto, there shall be set apart out of any sum in the Treasury not otherwise appropriated, the sum of three million dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest on which at five per cent. per annum shall be appropriated under the direction of the Secretary of the Interior to the use of the Indians receiving rations and annuities upon the reservations created by this act in proportion to the number that shall so receive rations and annuities at the time that this act takes effect, as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among the said Indians, and the other half for such purposes, including reasonable cash payments *per capita*, as in the discretion of such Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support.' 25 Stat. at Large, 895.

"This is the fund called the 'Sioux Trust Fund' in the fifth paragraph of this bill.

"It is further ordered and adjudged that each party pay the respective costs by each incurred."

Each party prayed an appeal from so much of the decree as was adverse to them. It was stipulated "that the amount

"The method of the payment of the interest on this fund was changed in 1880 by the act of 1880, chapter 41, as follows:

"'The Secretary of the Interior be, and he is hereby authorized to deposit in the Treasury of the United States, any and all sums now held by him, or which may hereafter be received by him, as Secretary of the Interior and trustee of various Indian tribes, on account of the redemption of United States bonds or other stocks and securities belonging to the Indian trust fund, and all sums received on account of sales of Indian trust lands, and the sales of stocks lately purchased for temporary investment whenever he is of the opinion that the best interests of the Indians will be promoted by such deposits in lieu of investments, and the United States shall pay interest semi-annually from the date of deposit of any and all such sums in the United States Treasury, at the rate per annum stipulated by treaties, or prescribed by law, and such payments shall be made in the usual manner, as each may become due, without further appropriation by Congress.'

"This provision is partially cited in the bill in paragraph 6.

"15. Under a treaty between the United States and different tribes of Sioux Indians made on April 29, 1868 (15 Stat. at Large, 635), these Indians made large cessions of land and other rights, and in partial consideration therefor the United States agreed with them as follows:

"'Art. VII. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of those as are or may be settled on said agricultural reservations, and they therefore, pledge themselves to compel their children, male and female, between the ages of six and sixteen years to attend school, and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with, and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of our English education shall be furnished, who will reside among said Indians and faithfully discharge his or her duties as a teacher. This provision of this article to continue for not less than twenty years.'

"By the act of Congress of February 28, 1877, ch. 72 (19 Stat. at Large, 254–6), ratifying an agreement with bands of Sioux Nation, in consideration of further land cessions, it was provided:

"'In consideration of the foregoing cession of territory and rights and upon full compliance with each and every obligation assumed by the said Indians, the United States does agree to provide all necessary aid to assist the said Indians in the work of civilization to furnish to them schools and instructions in mechanical and agricultural arts as provided by the treaty of 1868.'

which was to have been paid from the Sioux treaty fund under the contract in regard to which this suit is brought is approximately $24,000."

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"By the seventeenth section of the act of 1889, ch. 405 (25 Stat. at Large, 894), it was provided—

"'that the 7th article of the said treaty of April 29, 1868, securing to said Indians the benefit of education, subject to such modifications as Congress shall deem most effective to secure said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the act shall take effect.'

"By the act of 1905, ch. 1479 (33 Stat. at Large, p. 1048), entitled—

"'An act making appropriations for current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30th, 1906, and for other purposes'—

"it was provided under the heading 'Fulfilling Treaty Stipulations with and Support of Indian Tribes' as follows:

"'For support of and maintenance of day and industrial schools, including erection and repairs of school buildings in accordance with art. 7 of the treaty of April 29th, 1868, which article was continued in force for twenty years by sec. 17 of the act of March 2, 1889, $225,000.'

"A similar appropriation has been annually made for many years back in the Indian appropriation acts.

"This is the 'Treaty Fund' in dispute, referred to in the 4th paragraph of the bill.

"These defendants respectfully represent that this 'Treaty Fund' does not differ from the 'Trust Fund,' in the main point that it is money belonging to the Indians and not public money of the United States.

"Both funds arise from cessions made by the Indians of lands and other rights. The one is a specific sum of which the United States is a trustee for the Indians; the other is an obligation payable in installments under the agreement of a treaty.

"These defendants, therefore, respectfully submit that as to both of these funds there is nothing to prevent the Secretary of the Interior from using them in his discretion, and especially from using them as the real owners thereof desire and request.

"16. Prior to 1900 the sectarian schools were aided by appropriations from the public moneys, and in the discretion of the Secretary of the Interior, from the tribal funds just described.

"In 1900, not only the public appropriations ceased, as has been heretofore shown, but all aid from the tribal funds also ceased, except as to the Osage Treaty and trust funds hereinbefore referred to. At the request of the Osage Indians, their treaty funds have been annually and uninterruptedly applied to the Catholic mission schools under annual contract with the Commissioner of Indian Affairs, approved by the Secretary of the In-

The case was submitted on record and briefs, and the court affirmed the decree below in respect of the income of the "Trust Fund," and reversed the injunction against the payment from the "Treaty Fund," and remanded the case with directions to dismiss the bill at the cost of the complainants, whereupon the case was brought to this court on appeal.

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terior. With the exception of the Osage funds, no 'Tribal Funds' were applied to education in denominational schools from 1900 to 1904.

"In the meantime application was made to President McKinley by the 'Bureau of Catholic Indian Missions' for the revocation of the 'Browning Ruling' and the use of 'Tribal Funds' for the education of the Catholic Indian children in Catholic schools.

"On September 30, 1896, the then Commissioner of Indian Affairs, D. M. Browning, in answer to the question, 'whether parents of Indian children have the right to decide where their children shall attend school,' said:

"'It is your duty first to build up and maintain the Government day schools, as indicated in your letter, and the Indian parents have no right to designate which school their children shall attend.'

"This was the 'Browning ruling.' It was ordered abrogated by President McKinley in 1901, and some eight months after, to wit, January 17, 1902, it was formally abrogated by the Commissioner of Indian Affairs with the approval of the Secretary of the Interior.

"The question of the use of the 'Tribal Funds' was referred by President McKinley to the Secretary of the Interior, and by him to the Commissioner of Indian Affairs, who decided adversely to the appropriation on February 12, 1901.

"17. On or about January 1, 1904, the matter of the application for the use of 'Tribal Funds' for the education of Indian children in Mission Schools was brought to the attention of President Roosevelt by the 'Bureau of Catholic Indian Missions,' who urged that the Indians should be allowed to use their own money in educating their own children in the schools of their choice.

"President Roosevelt took up the matter on January 22, 1904, at a meeting in the executive office of the White House, at which were present the Attorney General (Mr. Knox) and Mr. Russell, of the Department of Justice, and Secretaries Hitchcock, Cortelyou and Wilson, and Postmaster General Payne. The President was legally advised that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained.

"The President decided that inasmuch as the legal authority existed to

*Mr. Charles C. Binney* and *Mr. Hampton L. Carson*, with whom *Mr. N. Dubois Miller* was on the brief, for appellants:

The term "contract schools," used in the Indian Appropriation Act for the fiscal year 1895, directing an investigation, and in the similar acts for the years 1896–1900, inclusive, imposing gradually increasing limitations upon the Secretary of

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grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice.

"A full and detailed statement of the action of the President in 1904 is set forth in his letter of February 3, 1905, which, with its enclosure, is herein set out at length:

* * * * * * * * * *

"'This new request was submitted to the Department of Justice, and the department decided, as set forth in the accompanying report, that the prohibition of the law as to the use of public moneys for sectarian schools did not extend to moneys belonging to the Indians themselves, and not to the public, and that these moneys belonging to the Indians themselves might be applied in accordance with the desire of the Indians for the support of the schools to which they were sending their children. There was, in my judgment, no question that, inasmuch as the legal authority existed to grant the request of the Indians, they were entitled as a matter of moral right to have the moneys coming to them used for the education of their children at the schools of their choice. Care must be taken, of course, to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled. But if these two conditions are fulfilled, it is, in my opinion, just and right that the Indians themselves should have their wishes respected when they request that their own money —not the money of the public—be applied to the support of certain schools to which they desire to send their children. The practice will be continued by the department unless Congress should decree to the contrary, or, of course, unless the courts should decide that the decision of the Department of Justice is erroneous.'

"This communication enclosed a letter from the Attorney General setting forth at length the grounds for the conclusion 'that, notwithstanding the declaration of Congressional intent not to make appropriations in the future of public moneys of the American people for sectarian institutions, the previous laws giving the Secretary of the Interior discretion to use certain moneys of the Indians held in trust in any way that he might see fit, including assistance to sectarian schools, were not repealed, and consequently his discretion remained. For some of these laws, see 14 Stat. 687; 16 Stat. 362; 21 Stat. 292; 22 Stat. 30; 25 Stat. 895; 26 Stat. 146; *id.* 344.'

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the Interior's power to contract, included the schools for which the contracts were then payable out of Indian treaty and trust funds.

When Congress in 1894 directed the Secretary of the In-

"Accordingly the following contracts were made by the United States with various sectarian organizations for the education of Indian children from 'Tribal Funds' for the fiscal year ending June 30, 1906:

| Name of School. | Denomination. | Pupils. | Tribe. | Rate per annum. | Total per year. |
|---|---|---|---|---|---|
| St. Joseph | Catholic | 170 | Menominee | $108 | $18,360 |
| St. Louis | Catholic | 75 | Osage | 125 | 9,375 |
| St. John | Catholic | 65 | Osage | 125 | 8,125 |
| Immaculate Conception | Catholic | 65 | Sioux | 108 | 7,020 |
| Holy Rosary | Catholic | 200 | Sioux | 108 | 21,600 |
| St. Francis | Catholic | 250 | Sioux | 108 | 27,000 |
| St. Labre | Catholic | 60 | Northern Cheyenne. | 108 | 6,480 |
| St. Mary | Catholic | 10 | Quapaw | 50 | 500 |
| Zoas' Boarding School | Lutheran | 40 | Menominee | 108 | 4,320 |
| Total | | 935 | | | $102,780 |

"In June, 1905, the Commissioner of Indian Affairs was notified by the 'Bureau of Catholic Indian Missions' that it was prepared to care for and educate during the fiscal year ending June 30, 1906, Indian pupils at the several schools carried on by it among the Sioux, Menominee, Osage, Northern Cheyenne, and Quapaw tribes upon the same terms and conditions as stipulated in its contracts for carrying on these schools for the fiscal year 1905, and requested that it be granted a renewal of the contracts in question, payable in each case from the trust and treaty funds of the tribe among which the school is located for the twelve months beginning July 1, 1905.

"To this application the Commissioner replied that the request would receive careful consideration; that the applicability of the trust and treaty funds had been submitted to the proper authorities for a definite determination, and indicated how petitions should be prepared, and the safeguards under which the signatures of the Indians should be made. Petitions were duly filed, signed under all the safeguards, by the Catholic Indians.

"In the meantime the schools were opened at the usual time and instruction given to the required number of pupils, in the confidence that the contracts applied for would be renewed.

"The Attorney General not having rendered any decision in the matter, the President, by a letter dated December 23, 1905, addressed to the Commissioner of Indian Affairs, after quoting a part of his letter of February 3, 1905, hereinbefore referred to, said:

"'There are two kinds of Indian funds involved in this matter. One is the trust fund, which requires no appropriation by Congress, and which clearly is to be administered as the Indians themselves request. As regards this fund, you will treat it on the assumption that the Indians have the right to say how it shall be used, so far as choosing the schools to which

terior "to inquire into and investigate the propriety of discontinuing contract schools and whether, in his judgment, the same can be done without detriment to the education of Indian children, and that he submit to Congress, at the next

their children are to go is concerned; and each Indian in a tribe to be credited with his *pro rata* share of the funds which you will apply for him to the Government school where that is the school used, or to the church school where that is the school used, instead of segregating any portion of the fund for the support of the Government school and prorating the balance.

"'The other fund consists of moneys appropriated by Congress in pursuance of treaty stipulations. As to these moneys it is uncertain as to whether or not the prohibition by Congress of their application for contract school applies—that is, whether or not we have the power legally to use these moneys as we clearly have the power to use the trust funds. It appears that certain of the contract schools are now being run in the belief that my letter quoted above authorized the use of the treaty funds. It would be a great hardship, in the absence of any clearly defined law on the subject, to cut them off at this time arbitrarily, and inasmuch as there is a serious question involved, I direct that until the close of the fiscal year these schools be paid for their services out of the moneys appropriated by Congress in pursuance of treaty obligations, on the same basis as the schools paid out of the trust funds—always exercising the precautions directed in my letter of February 3d, 1905, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled.' But no new contracts are to be entered into for such payments after the close of the present fiscal year, unless there is authorization by Congress or some determination by the courts.'

"Accordingly, the contracts for the fiscal year ending June 30, 1905, hereinafter set forth, were renewed for the fiscal year ending June 30, 1906, the new contracts being executed as of July 1, 1905.

"The services have been performed under all these contracts and the money paid in all of them, except under the contract with the 'Bureau of Catholic Indian Missions' for the education of 250 Indian pupils at St. Francis Mission School on the Rosebud Reservation. The payment of the $27,000 which is due under this contract has been withheld pending the decision by this honorable court as to validity of the contract and the appropriation of tribal funds for such purposes.

"18. And these defendants, specifically answering as to the contract in dispute, say:

"That it is a contract made between F. E. Leupp, Commissioner of Indian Affairs, for and on behalf of the United States of America, and the 'Bureau of Catholic Indian Missions,' executed as of July 1, 1905, for the care, education and maintenance of 250 Indian pupils at the St. Francis Mission School, Rosebud Reservation, South Dakota, at $108 per capita,

session, the result of such investigation, including an estimate of the annual cost, if any, of substituting Government schools for contract schools," and when the Secretary reported, suggesting a plan for gradually doing away with the contract schools, making no distinctions among them, both Congress and the Secretary referred to the contract schools in general, and not merely to those of them which were supported from the appropriations expressly made by Congress for Indian education, to the exclusion of the contract schools supported from Indian treaty and trust funds.

After the close of the fiscal year 1900 the Secretary of the Interior could not legally make or authorize any contract, in behalf of the United States, for the education of Indian pupils in any sectarian school.

Considering the direction to the Secretary of the Interior in 1894 to investigate the propriety of discontinuing contract schools, and to report the cost of substituting Government schools for contract schools; his report advocating a gradual reduction in the contract schools during a short period of years, during which period the Government should prepare to do without them; the adoption of the system advocated by him, successively restricting more and more his authority to con-

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per annum, amounting to $27,000. The contract was approved by Jesse E. Wilson, Acting Secretary of the Interior.

"Application for the contract was made by the 'Bureau of Catholic Indian Missions' on June 6, 1905.

"On March 26, 1906, a petition duly signed and genuinely signed by 212 members of the Sioux tribe of Indians of the Rosebud Agency, South Dakota, was filed, asking that the said contract applied for be entered into with the bureau.

"The payments under the contract were to be made from the 'Sioux Trust Fund' and the 'Sioux Treaty Fund,' as hereinbefore described, in the discretion of the Commissioner of Indian Affairs.

"There are 4,986 Indians on the rolls of the Rosebud Reservation, and the amount of tribal income applicable to education, in the discretion of the Commissioner, is—

"$250,047.90, or a per capita of $50.15.

"The 212 petitioners represent 669 shares, or $33,550.35, and of this they ask that $27,000 be used for the education of their children in St. Fran-

tract with such schools; the declarations in the acts of 1896 and 1897 that, subject to the restricted authority granted by those acts, it was "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school"; the declaration in the act of 1899 that the appropriation there made was "the final appropriation for sectarian schools"; and the fact that since 1899 no statute has granted the Secretary any authority to contract with sectarian schools for the education of Indian pupils; the conclusion is irresistible that Congress decided to abolish the entire system of Government aid to such schools, and to do so by depriving the Secretary of all authority to make any more such contracts.

Moreover, as it has been shown above that the term "contract schools" was officially used as including contract schools supported from Indian treaty and trust funds, the conclusion is irresistible that Congress made no distinction between contracts as to which the money was to come from the appropria-

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cis Mission School. The following table will represent the *pro rata* shares in these tribal funds, and the per capita shares:

| | | |
|---|---|---|
| 4,986 | Indians, | $250,047.90 Tribal Funds $50.15 per capita. |
| 669 | shares Petitions, | 33,550.35 Tribal Funds $50.15 per capita. |
| 4,317 | Petitions (non-petitions) | |
| 4,986 | | $250,047.90 Tribal Funds $50.15 per capita. |

"The cost of the Government school for the fiscal year was about $76,830. Since the shares of the petitioning Indians amount to $33,550.35, and the sum asked for the school is only $27,000 out of this share, and the petitions were genuinely signed, the terms of the executive order of President Roosevelt of February 3d, 1905, *e. g.*, 'to see that any petition by the Indians is genuine, and that the money appropriated for any given school represents only the *pro rata* proportion to which the Indians making the petition are entitled,' have been strictly carried out.

"The services under this contract have been fully performed to the satisfaction of the Commissioner of Indian Affairs, and the twenty-seven thousand dollars ($27,000) agreed to be paid is due and payable, if this honorable court determines that it is legally payable out of the 'Sioux Trust Fund' and the 'Sioux Treaty Fund.'"

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tion for the support of schools, and contracts as to which the money was to come from Indian treaty and trust funds. In either case the Government was the disburser of the money—the hand which directly dispensed the aid—and the money was disbursed under a contract. To deprive the Secretary of the power to make such contracts altogether was the only effectual means of preventing him from using Indian treaty and trust funds for sectarian schools, and it would operate just as effectually in regard to such funds as in regard to funds derived from the appropriation for the support of schools.

The Secretary's power to make such a contract was taken away altogether, and not merely as regards contracts where the money was to be paid out of appropriations by Congress expressly for the support of Indian schools.

As regards the taking away of the Secretary's power to make such a contract, no distinction can be drawn between money expressly appropriated by Congress for the support of Indian schools and money appropriated by Congress in fulfillment of Indian treaties and available for education.

As regards use under contracts with sectarian schools, no distinction can be drawn between money expressly appropriated by Congress for the support of Indian schools and money paid by the Government as interest on Indian funds held in trust by it.

While in the case of the Sioux trust fund the appropriation is made by a different system from that pursued with the Sioux treaty fund, there is still an appropriation within the meaning of the acts of 1896 and 1897, declaring it to be "the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school," and the act of 1899 which said, "this being the final appropriation for sectarian schools." The word "appropriation," used as it is here, in statutes of the class known as "appropriation acts," is necessarily technical. It means an appropriation by Congress of money in the Treasury of the United States. Restricted as this meaning is, however, the whole phrase,

"make no appropriation whatever," is as broad a phrase as the limits of that meaning will possibly permit, and it refers to any and every kind of appropriation that Congress can make, without regard to the method of such appropriation. "No appropriation *whatever*" is a phrase that can have no limits but those which necessarily restrict the word "appropriation" itself.

The appropriations of funds in the United States Treasury are of two kinds, viz., those made for each successive fiscal year, and permanent annual appropriations. The latter are provided for in §§ 3687-3689, Rev. Stat., and cover a number of matters (the cost of revenue collection, payment of interest on the public debt, etc.), which are expected to recur every year, either indefinitely or for a considerable period, so that it is held inadvisable to make a special appropriation for them every year. When the Revised Statutes were compiled, the Indian trust funds were all invested (under §§ 2095, 2096), and the income received was paid to the Indians or expended for them, and this system was not changed until the act of April 1, 1880, c. 41, 21 Stats. 70. That act, providing for the payment of interest upon Indian trust funds deposited in the Treasury to the credit of Indian tribes, such payment to "be made in the usual manner, as each may become due, without further appropriation by Congress," really constitutes a permanent annual appropriation of such interest. Had that change been made before the Revised Statutes were compiled, the interest on the Indian trust funds would presumably have been included in the permanent annual appropriation system. The words "*without further* appropriation by Congress" clearly show that the provision of the act of 1880 constituted an appropriation once for all, or in other words a permanent annual appropriation.

*The Solicitor General* and *Mr. Edgar H. Gans*, with whom *The Attorney General* was on the brief, for appellees:

There is no constitutional question. For eighty years Con-

gress extended aid out of the public funds to mission schools of various denominations, finally withdrawing it because of opposition among the people at large and because the time had thus arrived for establishing distinctive government schools. If there were a valid constitutional objection to the earlier course, it is probable that it would have been discovered during that period of eighty years. The Constitution provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." A religious establishment, however, is not synonymous with an establishment of religion. See *Bradfield* v. *Roberts*, 175 U. S. 291, upholding an appropriation for a Roman Catholic hospital. A school, like a hospital, is neither an establishment of religion nor a religious establishment, although along with secular education there might be, as there commonly is, instruction in morality and religion, just as in a hospital there would be religious ministrations.

But opposing counsel advance a line of suggestion similar to that made by the complainant in *Bradfield* v. *Roberts*, viz.: that the contract involved a principle and a precedent contrary to the Article of the Constitution, and tended to obliterate the essential distinction between civil and religious functions and injured the complainant and all other citizens and taxpayers of the United States, and was contrary to the Constitution and declared policy of the Government. But the court passed all such contentions, merely referring to them as statements of complainant's opinion.

The question here is wholly of statutory construction. The aid of the public funds was gradually diminished and then wholly withdrawn with the declaration in the acts of 1896 and 1897 that thereafter the policy of the Government would be to make no appropriation for sectarian schools, and the reference to the appropriation of 1899 as final, 29 Stat. 345; 30 Stat. 79 and 942. These declarations of policy would not prevent the present or a future Congress from resuming the appropriation and renewing the aid. The pro

hibition must be restricted to the particular kind of appropriations in which the declaration of policy appears, namely, to those under the heading "Support of Schools" which are altogether appropriations of public funds for Indian education; it is not intended to apply to the "tribal funds," as contended by the appellants, which are dealt with in an entirely different and separated portion of the appropriation acts. It is a case where the proviso or exception relates only to the particular paragraph or distinct portion of the statute where it occurs, and is not to be extended to the whole statute or other portions of it. *Savings Bank* v. *Collector*, 3 Wall. 495; *Henderson's Tobacco*, 11 Wall. 658; *Dollar Savings Bank* v. *United States*, 19 Wall. 227.

The "treaty funds" are manifestly funds belonging to the Indians, just as much in the case of the treaty funds which are the annual payment by installment of obligations to the Indians incurred under treaties, as with the trust funds which are the lump sums paid in settlement of such obligations, upon which the income is expended for the benefit of the Indians. In each case there is an "appropriation," annual or permanent, made, not as the ordinary appropriation applying public funds, but simply as an authority or mandate to the executive agents and the trustee to apply the avails of the fund as usual every year for the benefit of the *cestui que trust*.

There is no injustice in permitting an Indian to select a school for his children under the auspices of the church to which he is attached, and allowing on that account a portion of the tribal funds or a portion of the annuities or rations to be applied. Why should not one Indian or a group of Indians benefit by their strict proportionate share of the tribal funds and be permitted to determine, always within the scope of the Secretary's discretion, how their proportion of the funds should be expended? It is significant that Congress has refused to direct otherwise, laying on the table a bill forbidding trust and treaty funds to be so applied (H. R. 7067, 59th Cong., 1st sess.).

As to the related point that payments out of the treaty fund will diminish the amount of money which should be expended for the benefit of the entire tribe, the fact is that while the money arising from such funds is not systematically distributed *per capita*, it is nevertheless expended for *the benefit and advantage* of the Indians under a liberal exercise of the Secretary's discretion. The Indian may have no individual *locus standi* to compel payment in hand to him, but that does not prohibit the Secretary from applying a proper share of the funds for his individual benefit, especially when the Secretary's discretion is exercised by giving the same benefit to a collective group of individual Indians. That the treaty funds are intended by the law to provide for the Indians as individuals is evident from the heading "Subsistence and Civilization," under which the appropriation acts go on to provide for fulfilling treaty obligations, and from the long established practice of distributing food and clothing out of treaty funds. An examination of examples of such funds in the treaties and statutes shows that the entire application of the proceeds of such tribal funds is committed to the Secretary's discretion with little limitation. Treaty of 1848, art. 5, 9 Stat. 952; treaty of 1865, art. 2, 14 Stat. 687; act July 15, 1870, c. 296, 16 Stat. 362; act June 16, c. 252, 21 Stat. 292; act March 22, 1882, c. 46, 22 Stat. 30; act June 12, 1890, c. 418, 26 Stat. 146. In short, it is evident that while in a certain sense these funds and their revenue are to be administered for the benefit of the tribe, the aggregate community, the determination of that matter also is committed to the Secretary, and he is plainly authorized to administer the funds proportionately for the benefit of smaller groups or of individuals and in the way of benefiting them with any educational or civilizing influence.

It would be unjust to withhold from an Indian or community of Indians the right, within reasonable limits, in good faith, and under the safeguards provided by the President's instructions, to choose their own school and to choose it frankly because the education therein is under the influence of the

religious faith in which they believe and to which they are attached, and to have the use of their proportion of tribal funds applied under the control of the Secretary's discretion to maintain such schools. Any other view of the case perverts the supposed general spirit of the constitutional provision into a means of prohibiting the free exercise of religion.

MR. CHIEF JUSTICE FULLER, after making the foregoing statement, delivered the opinion of the court.

We concur in the decree of the Court of Appeals of the District and the reasoning by which its conclusion is supported, as set forth in the opinion of Wright, J., speaking for the court. Washington Law Rep., v. 35, p. 766.

The validity of the contract for $27,000 is attacked on the ground that all contracts for sectarian education among the Indians are forbidden by certain provisos contained in the Indian Appropriation Acts of 1895, 1896, 1897, 1898 and 1899. But if those provisos relate only to the appropriations made by the Government out of the public moneys of the United States raised by taxation from persons of all creeds and faiths, or none at all, and appropriated gratuitously for the purpose of education among the Indians, and not to "Tribal Funds," which belong to the Indians themselves, then the contract must be sustained. The difference between one class of appropriations and the other has long been recognized in the annual appropriation acts. The gratuitous appropriation of public moneys for the purpose of Indian education has always been made under the heading "Support of Schools," whilst the appropriation of the "Treaty Fund" has always been under the heading "Fulfilling Treaty Stipulations and Support of Indian Tribes," and that from the "Trust Fund" is not in the Indian Appropriation Acts at all. One class of appropriations relates to public moneys belonging to the Government; the other to moneys which belong to the Indians and which is administered for them by the Government.

From the history of appropriations of public moneys for education of Indians, set forth in the brief of counsel for appellees and again at length in the answer, it appears that before 1895 the Government for a number of years had made contracts for sectarian schools for the education of the Indians, and the money due on these contracts was paid, in the discretion of the Commissioner of Indian Affairs, from the "Tribal Funds" and from the gratuitous public appropriations. But in 1894 opposition developed against appropriating public moneys for sectarian education. Accordingly, in the Indian Appropriation Act of 1894, under the heading of "Support of Schools," the Secretary of the Interior was directed to investigate the propriety of discontinuing contract schools and to make such recommendations as he might deem proper. The Secretary suggested a gradual reduction in the public appropriations on account of the money which had been invested in these schools, with the approbation of the Government. He said: "It would be scarcely just to abolish them entirely—to abandon instantly a policy so long recognized," and suggested that they should be decreased at the rate of not less than twenty per cent a year. Thus in a few years they would cease to exist, and during this time the bureau would be gradually prepared to do without them, while they might gather strength to continue without Government aid.

Accordingly Congress introduced in the appropriation act of 1895 a limitation on the use of public moneys in sectarian schools. This act appropriated under the heading "Support of Schools" "for the support of Indian and industrial schools and for other purposes . . . $1,164,350, . . . provided, that the Secretary of the Interior shall make contracts, but only with the present contract schools for the education of Indian pupils during the fiscal year ending June 30, 1896, to an extent not exceeding eighty per cent of the amount so used in the fiscal year 1895, and the Government shall as early as practicable make provision for the education of the Indians in Government schools."

This limitation of eighty per cent was to be expended for contract schools, which were those that up to that time had educated Indians through the use of public moneys, and had no relation and did not refer to "Tribal Funds."

In the appropriation act of 1896, under the same heading, "Support of Schools," the appropriation of public money of $1,235,000 was limited by a proviso that contracts should only be made at places where non-sectarian schools cannot be provided for Indian children to an amount not exceeding fifty per cent of the amount so used for the fiscal year 1895, and immediately following the appropriation of public money appears the expression, "and it is hereby declared to be the settled policy of the Government to hereafter make no appropriation whatever for education in any sectarian school." This limitation, if it can be given effect as such, manifestly applies to the use of public moneys gratuitously appropriated for such purpose, and not to moneys belonging to the Indians themselves. In the appropriation act of 1897 the same declaration of policy occurs as a limitation on the appropriation of public moneys for the support of schools, and the amount applicable to contract schools was limited to forty per cent of the amount used in 1895. In the act of 1898 the amount applicable to contract schools was limited to thirty per cent, and in the act of 1899 the amount so applicable was limited to fifteen per cent, these words being added: "this being the final appropriation for sectarian schools." The declaration of the settled policy of the Government is found only in the acts of 1896 and 1897, and was entirely carried out by the reductions provided for.

Since 1899 public moneys are appropriated under the heading "Support of Schools" "for the support of Indian and industrial schools and for other educational purposes," without saying anything about sectarian schools. This was not needed, as the effect of the legislation was to make subsequent appropriations for education mean that sectarian schools were excluded in sharing in them, unless otherwise provided.

As has been shown, in 1868 the United States made a treaty with the Sioux Indians, under which the Indians made large cessions of land and other rights. In consideration of this the United States agreed that for every thirty children a house should be provided and a teacher competent to teach the elementary branches of our English education should be furnished for twenty years. In 1877, in consideration of further land cessions, the United States agreed to furnish all necessary aid to assist the Indians in the work of civilization and furnish them schools and instruction in mechanical and agricultural arts, as provided by the Treaty of 1868. In 1889 Congress extended the obligation of the treaty for twenty years, subject to such modifications as Congress should deem most effective, to secure the Indians equivalent benefits of such education. Thereafter, in every annual Indian appropriation act, there was an appropriation to carry out the terms of this treaty, under the heading "Fulfilling Treaty Stipulations with and Support of Indian Tribes."

These appropriations rested on different grounds from the gratuitous appropriations of public moneys under the heading "Support of Schools." The two subjects were separately treated in each act, and, naturally, as they are essentially different in character. One is the gratuitous appropriation of public moneys for the purpose of Indian education, but the "Treaty Fund" is not public money in this sense. It is the Indians' money, or at least is dealt with by the Government as if it belonged to them, as morally it does. It differs from the "Trust Fund" in this: The "Trust Fund" has been set aside for the Indians and the income expended for their benefit, which expenditure required no annual appropriation. The whole amount due the Indians for certain land cessions was appropriated in one lump sum by the act of 1889, 25 Stat. 888, chap. 405. This "Trust Fund" is held for the Indians and not distributed *per capita*, being held as property in common. The money is distributed in accordance with the discretion of the Secretary of the Interior, but really belongs to

the Indians. The President declared it to be the moral right of the Indians to have this "Trust Fund" applied to the education of the Indians in the schools of their choice, and the same view was entertained by the Supreme Court of the District of Columbia and the Court of Appeals of the District. But the "Treaty Fund" has exactly the same characteristics. They are moneys belonging really to the Indians. They are the price of land ceded by the Indians to the Government. The only difference is that in the "Treaty Fund" the debt to the Indians created and secured by the treaty is paid by annual appropriations. They are not gratuitous appropriations of public moneys, but the payment, as we repeat, of a treaty debt in installments. We perceive no justification for applying the proviso or declaration of policy to the payment of treaty obligations, the two things being distinct and different in nature and having no relation to each other, except that both are technically appropriations.

Some reference is made to the Constitution, in respect to this contract with the Bureau of Catholic Indian Missions. It is not contended that it is unconstitutional, and it could not be. *Roberts* v. *Bradfield*, 12 App. D. C. 475; *Bradfield* v. *Roberts*, 175 U. S. 291. But it is contended that the spirit of the Constitution requires that the declaration of policy that the Government "shall make no appropriation whatever for education in any sectarian schools" should be treated as applicable, on the ground that the actions of the United States were to always be undenominational, and that, therefore, the Government can never act in a sectarian capacity, either in the use of its own funds or in that of the funds of others, in respect of which it is a trustee; hence that even the Sioux trust fund cannot be applied for education in Catholic schools, even though the owners of the fund so desire it. But we cannot concede the proposition that Indians cannot be allowed to use their own money to educate their children in the schools of their own choice because the Government is necessarily undenominational, as it cannot make any law respecting an

establishment of religion or prohibiting the free exercise thereof. The Court of Appeals well said:

"The 'Treaty' and 'Trust' moneys are the only moneys that the Indians can lay claim to as matter of right; the only sums on which they are entitled to rely as theirs for education; and while these moneys are not delivered to them in hand, yet the money must not only be provided, but be expended, for their benefit and in part for their education; it seems inconceivable that Congress should have intended to prohibit them from receiving religious education at their own cost if they so desired it; such an intent would be one 'to prohibit the free exercise of religion' amongst the Indians, and such would be the effect of the construction for which the complainants contend."

The *cestuis que trust* cannot be deprived of their rights by the trustee in the exercise of power implied.

*Decree affirmed.*